DAVID C. SHEPARD

VS.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

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UNITED STATES CIRCUIT COURT

DISTRICT OF MINNESOTA

THIRD DIVISION

DAVID C. SHEPARD,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, et al.,

Defendants.

TESTIMONY

VOLUME 1.

WITH LIST OF WITNESSES.

CHAS. E. OTIS, Master.

GEO. N. HILLMAN, Reporter.

UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION.

(In Equity.)

DAVID C. SHEPARD,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD AND ADOLPH MICHAUD,

Defendants.

At 10 o'clock A. M., June 4, 1908, the hearing of the above entitled cause was begun before Hon. Chas. E. Otis, Special Master, in room 306 Federal building, at St. Paul, Minn.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

EDWARD T. YOUNG, Attorney General,
THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for members of the Railroad and Warehouse Commission, et al.

The MASTER: Gentlemen, the Reporter has made up a record of the preliminary meeting, and I thought perhaps, if counsel would look it over, they could determine whether it was too full or sufficiently full to answer the purpose. I understood, from what Judge Sanborn stated, that probably counsel would desire the proceedings very fully taken, and quite generally the

remarks of counsel upon the testimony as it comes in, and matters of that kind. Of course, if that is done, it will increase the bulk of the record very considerably, and I don't know whether the Judge made that suggestion because of some suggestion of counsel or whether it was because the Court might like to have a photograph of the proceedings here. That is for you gentlemen to say. Of course, ordinarily, the remarks of counsel would not appear in a record of this kind, as I understand, if it were simply a mere matter of taking testimony. But you will see that in the preliminary meeting practically everything that occurred was noted down, and that was very proper, at least for the first meeting, because it serves to refer to for the understanding of counsel.

Attorney-General YOUNG: It seems to me that if remarks of counsel were always taken down, it might unduly swell the transcript. It will necessarily be lengthy, at best, and it will require a good deal of effort on the part of the Court to go through and become familiar with it, and it seems to me it would be desirable to have it condensed as much as possible and eliminate all unnecessary matter.

The MASTER: I assume that arguments of counsel you would like to have noted on any questions that may arise, as well as the final argument that may be submitted. Of course these are important questions and we want all the light we can get.

Mr. HOW: I think if we are watchful we can perhaps indicate, from time to time, what parts we do not want to go into the record.

The MASTER: Well, that would relieve the record very materially. You may proceed.

Mr. HOW: I would like to call Mr. Darling, in the case of David C. Shepard against the Northern Pacific Railway Company and others.

WILLIAM L. DARLING,

Sworn on behalf of Complainant, testified:

By Mr. How:

Q. Will you state your name, your residence and your present occupation, Mr. Darling?

A. My name is William L. Darling, age 52 years.

Q. And your residence?

A. Residence, St. Paul, Minnesota.

Q. And your occupation?

A. Civil engineer and Chief Engineer of the Northern Pacific Railway Company.

Q. Will you state the amount and character of your experience as a railway engineer, and with what companies you have served?

A. I studied and graduated in the engineering course at the Worcester Polytechnic Institute; I began railroading in 1879, and have been continuously employed with railroads since.

Q. With what companies?

A. Twenty-six years with the Northern Pacific, two years with the Rock Island system as Chief Engineer, two years with the Burlington, and one year with the Great Northern, or with the Duluth, Watertown & Pacific, and other roads.

Q. What was the character of your service with the Burlington, what did you accomplish during your service?

A. I had charge of the terminals between Prescott and St. Paul, and in St. Paul and Minneapolis, and made several preliminary location surveys for them in Iowa.

Q. How thorough a knowledge have you of the Northern Pacific system?

A. From Ashland and Minneapolis through to Thompson Falls I have been over every foot of it, either afoot, horseback or with a hand car, except some of the branch lines.

Q. Where is Thompson Falls?

A. That is about midway between Missoula and Spokane, or very near the state line of Montana and Idaho.

Q. How thorough a knowledge have you of the remainder of the system?

A. I have been over it a great many times, in car and on train.

Q. By daylight?

A. By daylight, yes, sir.

Q. Will you describe the Northern Pacific system in general; give its terminals.

A. The Northern Pacific has a main trunk line extending from Ashland, Duluth and Superior, at the head of the lakes, to St. Paul and Minneapolis, through, in a general westerly direction, the states of Minnesota, North Dakota, Montana, Idaho, and Washington to Puget Sound and thence south to Portland, in Oregon, on the Columbia river.

Q. How many miles of main track has it?

A. I will have to refer to this record.

Q. You can do that, I think.

A. It has 2,860.67 miles of main line, double track and third track; it also has 2,679.75 miles of main line in branches, with spurs, yards and side-tracks enough to make a total of 4,834.12 miles plus 2,860.67 miles of main track.

Q. Aggregating—

A. Aggregating 7,701.72 miles, as of June 30, 1906.

Q. What has been added since then?

A. There are now 2,970.33 miles of main line, including second track and third track, and 5,176.12 miles of branch lines, spurs, siding, yards, etc., making a total of 8,146.45 miles approximately, as of April 30, 1908. I want to explain, Mr. How, that this is approximate, because we do not get our returns of the mileage laid until about June 30th, and we haven't got all our returns in for the sidetracks and yards, this year.

Map marked Complainant's Exhibit 1, and shown witness.

Q. Is this Complainant's Exhibit 1, a map of the Northern Pacific system?

A. Yes, sir.

Q. Those colors represent what?

A. Represent the divisions as they are now operated.

Mr. How: I offer this in evidence, Complainant's Exhibit 1. I will see that there are copies of that map furnished, as stipulated by the Master at the preliminary hearing, but at present I haven't them.

Q. Have you prepared a statement of the cost of reconstructing the Northern Pacific system at the present time?

A. I have, as of the date April 30, 1908.

Q. Will you produce that?

Paper produced and marked Complainant's Exhibit 2.

Q. How is this statement prepared, Mr. Darling? state in detail.

A. It is prepared from our records and from a general knowledge of the system.

Q. Whose knowledge of the system?

A. My own and others.

Q. How many people, approximately, were engaged in the preparation of that statement?

A. Oh, I couldn't tell you that; there were a great many.

Q. Operatives or employes of the Northern Pacific system?

A. Yes, sir, entirely.

Q. In your department and in other departments?

A. Yes, sir.

Q. Was the statement prepared under your direction?

A. Entirely, yes, sir.

Q. Are you willing to produce any persons that had a hand in the preparation of the statement for examination with regard to its accuracy?

A. Yes, sir.

Q. Are you willing that the records of your company shall

be examined by counsel for the defendants, or any of them, or any representatives of theirs, in order to show the accuracy of the statement?

A. Yes, sir.

Q. At any reasonable time?

A. Yes, sir; so far as I have any authority.

Q. Well, you have no doubt that you can obtain authority for that purpose?

A. No, sir.

Q. The first item on this statement, Mr. Darling, is Engineering as of date April 30, 1908; that is, the system as then constituted, you say, would cost $11,143,922?

A. Yes, sir.

Q. How did you arrive at those figures?

A. I will have to explain that, in the first place, my estimates are based on an estimate returned or testified to in Chicago before the Interstate Commerce Commission about two years ago.

Q. By whom?

A. By myself; and since that time all work that has been done and charged to capital and to improvements and betterments has been taken from the auditor's books and added to that original statement corrected, from which I have obtained the total cost of the road to April 30, 1908. I have one column here showing the estimate as of June 30, 1906, which is very close to what I testified in the Spokana rate case, with some exceptions. Those items I have changed on account of getting better information. We have, within the last two years, though, put a great deal of work in on the estimates in Minnesota and Washington, and done some work in North Dakota, and we have been able to check up our records better and get more accurate results than we had before.

Q. How do you arrive at the $11,143,922 charged for engineering expenses? on what do you base that estimate?

A. That represents the cost of engineering up to June 30, 1906, plus what has been done since, and as taken from the auditor's records.

Q. Yes, but how did you get your figures as of June 30, 1906?

A. They are three per cent on the total cost of the work, including all items 1 to 43 inclusive, and the two items below that; in other words, it is three per cent on the total of $361,860,529.

Q. What can you say, from your experience, with regard to the reasonableness of that estimate?

A. It is a very reasonable price.

Q. According to your experience?

A. Yes, sir.

Q. Do you know what is generally allowed for engineering expenses in constructing a line of railway?

A. About three per cent.

Q. Now, with regard to the value of the right-of-way and station grounds and real estate, the second and third items, amounting to $108,096,399, how did you arrive at those figures?

A. That is arrived at in the same way as the previous item, except that for the total expended to June 30, 1906, which is obtained from Mr. Cooper of the Right-of-way department, I got that entirely in his office.

Q. You take the record of the land department for those figures?

A. Yes, sir. And to that I add the work of the moneys expended in right-of-way and real estate since until April 30.

Q. As shown by what records?

A. As shown by the auditor's records, making a total of $108,096,399.

Q. With regard to the fourth item, of grading, taking the figures as of June 30, 1906, as $77,468,890, how did you arrive at that estimate?

A. That is obtained entirely from our records and general knowledge of the system. That has been made up in detail and has been amplified from the Spokane estimate. At the time that the Spokane estimate was made, we didn't have records and information enough to get it in complete and detailed form. Now we have checked that all over in connection with the Washington and Minnesota rate cases or valuations, and we have got a much more accurate estimate than we had before, and it has been increased something like $200,000 I think, over that estimate. And to that I have added the moneys expended up to April 30, 1908, since that time.

Q. As shown by what records?

A. As shown by the auditor's records.

Q. $77,468,890 as of date June 30, 1906, I understand are not taken from your records; that is your estimate; that is, the money figures are not taken from your records?

A. No, sir.

Q. That is your estimate based on what prices?

A. On another sheet I have the details of all that grading estimate,—about the seventh page. This seventh page shows the quantities and the unit prices. I would like to say, in connection with these unit prices, that they are based on the completion of the entire Northern Pacific system in ten years, where I suppose that there is a certain amount of plant available for this work, and in order to complete the entire system in ten years, these are about the prices that we would have to pay, not to the contractors, but to the contractors and what additional work the railroad company has to do itself.

Q. How do they compare with prices that you are paying at present?

A. Well, they are much less.

Q. Than prices you are now paying for work?

A. Yes, sir.

Q. Will you state what your idea is with regard to the

reasonableness of that estimate, based upon your experience and your knowledge of present prices?

A. I think it is a very fair estimate based on what the average cost would be over a period of ten years.

Q. How long, in your judgment, would it take to reconstruct the Northern Pacific system as it now exists?

A. Ten years at least.

Q. With regard to the fifth item, Tunnels, your figures as of June 30, 1906, of $3,921,421, how did you arrive at that estimate?

A. That was taken from our records and unit prices assumed for quantities on the basis of what work can be done now, under average conditions.

Q. You refer to your records for the nature of the tunnels and the size of them?

A. Yes, sir.

Q. What you call quantities?

A. Yes, sir.

Q. And you apply the current prices to the work, as I understand it?

A. I apply the prices that I have assumed, on the supposition that the work will be done in ten years. All my prices are based on that assumption.

Q. Then you have raised those figures as of date April 30, 1908, to $4,638,637; what authority had you for that raise in figures?

A. Those are auditor's charges for work done since that date.

Q. That then was taken from the auditor's books?

A. The additional sum, yes, sir.

Q. And that I understand to be the case with regard to all the additions as shown by the second column?

A. Yes, sir.

Q. Now, did you take the same course with regard to form-

ing your estimate as of June 30, 1906, with the remainder of these items?

A. Yes, sir, except that these figures are detailed to comply with the interstate commerce distribution.

Q. Yes, but I mean with regard to making your own estimate of them?

A. Identically, yes, sir.

Q. I see that you have at the bottom here, contingencies ten per cent of the $361,860,529 which formed the total of your estimates of the work under date of June 30, 1906. Will you explain on what basis you allow that amount?

A. Well, that is merely an arbitrary sum, and is based on experience in making estimates. Now, there are a great many things that we cannot include or cannot find in these estimates, and if we should build a new line parallel with our present line we are very likely to run against obstructions that we cannot provide for, and in going over estimates of our own line, we are very apt to leave out things and forget things that should be included, and for that reason I have allowed this item of contingencies, which is generally allowed.

Q. What has been your custom with regard to that in estimating work to be done?

A. In the preliminary estimates we allow ten per cent, but we always have the opportunity of increasing that estimate, if it overruns. Therefore, if we were going to be confined to an exact sum we would have to allow a good deal more than ten per cent for contingencies.

Q. What has been your experience in the construction of railway lines upon the question as to whether that allowance of ten per cent has been too high or too low?

A. Well for the work that we have done in the last two and a half years we have overrun our estimates from 25 to 40 per cent.

Q. What has been your general experience in regard to that matter?

A. Oh, they generally overrun 10 or 12 per cent; sometimes they are less, but they will generally average about in the neighborhood of ten per cent; they overrun.

Q. That covers local expenses, I suppose?

A. Yes, sir.

Q. Personal injury damages, and other things of like nature, that you—

A. It is supposed to cover everything except the cost of raising the money.

Q. Now, you have allowed interest at ten per cent, being two and a half years at four per cent, on $398,046,582. Will you explain the basis of that allowance?

A. That is merely an arbitrary sum, and it is taken on the supposition that this money will be invested that length of time before it will earn any money; that is, it will take ten years to complete the system, and I estimate that the money will be tied up at least two and a half years, or half the money tied up for five years before you begin to get returns on it. It might be a good deal longer than that.

The MASTER: That two years and a half is an arbitrary average that you make?

WITNESS: Yes, sir.

Q. But you say, I understand, that you could not build the road in five years?

A. No, sir.

Q. And this, therefore, you think is a small time of allowance?

A. Yes, sir.

Attorney-General YOUNG: This is on the theory, Mr. How, that the entire system were being reconstructed?

Mr. HOW: Yes.

Attorney-General YOUNG: And this interest and these others

items are figured in upon that theory?

Mr. HOW: Yes.

Attorney-General YOUNG: They have no actual relation to the existing road as it stands?

Mr. HOW: No; we are trying to establish the cost of reconstructing the Northern Pacific railroad as the Supreme Court, in the case of Smyth vs. Ames, tells us to do.

Q. Now, this interest charge, as I understood, is this: If it takes a million dollars to construct a line, and the line cannot be used until it is constructed, and it takes two years to construct the line, the average time that that million dollars is out of use and earning no income is one year. We calculate interest at four per cent, which we think is less than we could get the money for, and we calculate interest for five years, an average of five years, average two and a half years, five years being half the time that we think we could complete the road in.

A. I would like to give you a concrete example of that, Mr. How.

Q. I would like to have you.

A. We are constructing the Portland and Seattle railway from Spokane to Portland, and there is a very large amount of money tied up in it, and it is impossible to get any returns out of the operation of that road until we get the line completed from Vancouver to Portland, although it has been operated since last January, and we cannot get full returns until we get a line constructed from Pasco to Spokane, and the line renewed or improved between Vancouver and Kalama, and that probably will not be for eight or ten months.

Q. Part of the line is being operated, you say?

A. 220 miles of it is being operated.

Q. Do you know whether at a profit or a loss?

A. I understand it is operated—it must be—at a loss now.

Q. So that you are now getting no returns?

A. No, sir.

Attorney-General YOUNG: Let me just ask one other question: Your estimate of interest here on the cost of construction is based upon the assumption that there will be no returns from the road until the entire system is completed?

WITNESS: No, sir, that is not a fact. My estimate is based on the fact that the entire money will be in use for two and a half years without any returns, although we are ten years in constructing.

Attorney-General YOUNG: I see.

The MASTER: That is, two and a half years would be the average time that the capital would be lying idle?

WITNESS: Yes, sir.

The MASTER: During the ten-year period?

WITNESS: Yes, sir.

The MASTER: Aside from that it would be earning money except for that time?

WITNESS: Yes, sir.

The MASTER: Or at least keeping even?

WITNESS: Yes, sir.

Q. What can you say with regard to the reasonableness of that allowance, based on your experience in constructing railways?

A. Oh, I believe it is a very reasonable allowance.

Q. You have an item of seven millions of dollars for the lines in Manitoba. Where did you get those figures?

A. That is a figure that we estimate because the lines in Manitoba are leased for that sum of money to the Manitoba government. They could not be reproduced for that sum, but I would not dare to make an estimate on them because I have not been over the lines for six or seven years.

Q. By leased for that sum, you mean leased upon the basis of that value?

A. Yes, sir.

Q. The Duluth Union Depot, exclusive of right-of-way, $597,545?

A. That is assumed, from an estimate made by Mr. Kimberly of the Northern Pacific, who is president of the Duluth Union Depot Company.

Q. You took his figures for that?

A. Yes, sir.

Q. Are these figures a part of the records of your Company now?

A. Yes, sir; I have checked those figures up and I know they are approximately correct.

Q. St. Paul Union Depot, one-ninth interest, $610,572. How did you arrive at those figures?

A. That figure is taken from a return which I made to the Minnesota Railway and Warehouse Commission as of December 31, 1906.

Q. And how did you arrive at the figures at that time?

A. From an actual estimate.

Q. Those are your figures?

A. Yes, sir.

Q. And you think that they ought not to vary between that date and this?

A. Why, I can't see that they vary, no, sir.

Q. Minnesota Transfer Railway, one-tenth interest, $575,600. How did you arrive at those figures?

A. That was taken from an estimate returned to the railway commission by the president of the Minnesota Transfer, who furnished me these figures.

Q. Are those part of the records of your Company now?

A. No, sir.

Q. Taken from his estimate entirely?

A. Yes, sir.

Q. Supplies on hand, $3,465,331; how did you arrive at those figures?

A. Those are the actual supplies on hand on the system as furnished me by the auditor and by the auditor of motive-power accounts.

Q. Taken from the records of your Company?

A. Yes, sir.

Q. And the same with regard to the second column, $6,000,000 odd?

A. Yes, sir.

Q. Of date April 30, 1908?

A. Yes, sir. I would like to explain, also, that there is a portion of the Northern Pacific system not included in this estimate.

Q. I see that it does not purport to include it all.

A. No, sir.

Q. Is this entire statement accurate and true, to the best of your knowledge?

A. Yes, sir.

Q. The total figures up $497,865,035. Whose judgment do those figures represent?

A. My own.

Q. And that judgment is based upon your own knowledge and your information from the records of the Company and employes of the Company?

A. Yes, sir.

Mr. HOW: Now, I offer the statement, Complainant's Exhibit 2, in evidence.

Mr. O'BRIEN: We object to the statement, upon the ground that it is not the best evidence, contains hearsay evidence, is incompetent, irrelevant and immaterial; further, that there is no foundation laid, and that the schedule simply states conclusions.

The MASTER: I don't understand that the Master has very much power in ruling on testimony. Perhaps the only case where he would be justified in sustaining any objection that

might be interposed is where testimony is sought to be introduced, and is clearly irrelevant and sought to be introduced for some improper purpose; of course this does not come within that rule, and the objection will be noted.

Mr. O'BRIEN: It might be well to understand, it this time, whether objections are to be noted as evidence is offered, or whether we will be at liberty to make objections afterwards.

The MASTER: I am inclined to think that the objections should be made as the testimony proceeds, as you would in taking any deposition, but the Master will make no ruling on them, unless a ruling is insisted upon, upon the ground that the testimony is clearly improper.

Mr. O'BRIEN: Practically scandalous?

The MASTER: Yes; I think it would be proper, and it is customary, in such matters, to make your objection to the testimony as it is offered; otherwise the Court's attention would not be called to the state of the record and to matters his attention ought to be called to, in order to determine just what weight should be given to the testimony.

Attorney-General YOUNG: I would like to inform the Court that Mr. E. S. Durment appears with counsel for defendants as one of the attorneys for the defense. I would like that noted on the record.

Q. What figures in this Complainant's Exhibit 2 (this statement) represent your own individual judgment, and what figures did you have to rely upon others for?

A. Why, it represents my own individual judgment and work in everything except the following items: Right-of-way and station grounds, real estate, passenger-train cars, freight-train cars, work equipment, Minnesota Transfer Railway, supplies on hand, and all items representing the difference between the estimated cost as of June 30, 1906, and April 30, 1908. I would like to say about that latter statement, that these have

all been checked over by myself except the items enumerated in the first column.

The MASTER: What do you mean by checked over?

WITNESS: The auditor renders a statement every month for construction work and improvements and betterments; our department has charge of that work, and as they render the statements we have to check them over and see that they are right, according to our accounts, and on our general knowledge of the work.

Q. So that with regard to those additions made in the second column, I understand you that you have checked over everything excepting these specially excepted items that you say you had to depend upon others for.

A. Yes, sir.

The MASTER: Do I understand that these items were entered in your books at or about the time that the expenditures were made and that you have books showing these various items on which these figures here are based?

WITNESS: Yes, sir. I don't mean to say that we keep a complete set of books, but we have the details that go to make up these charges.

The MASTER: And these were entries made in the regular course of the business of the construction of the road?

WITNESS: Yes, sir.

The MASTER: Not for any particular purpose, but for the purpose that the Company may itself know just what it is doing and what the expenditures are, and for what?

WITNESS: Yes, sir. These are figures made from vouchers which our department has approved, and we have the record of all vouchers and all details.

The MASTER: I suppose that will all be drawn out more fully.

Q. That does not apply to the first column; the first column has nothing to do with the original cost of construction.

A. The additions made to the first column producing the

second column have been actual expenditures.

Attorney-General YOUNG: The first column is all estimates?

Mr. HOW: All estimates.

The MASTER: Well, the first column itself was made from entries on the books?

Mr. HOW: No.

Attorney General YOUNG: No.

The MASTER: They are estimates?

WITNESS: They are estimates based on quantities which we have a record of and our general knowledge of the work of the system.

Mr. HOW: Do you raise the objection that no part of this statement is admissible because some of it is based upon hearsay, so that it is going to be necessary for me to go through with each item and have it offered, those figures orally?

Mr. O'BRIEN: Yes, we object to it on that ground.

Mr. HOW: You raise the objection, then, that can be obviated by my having him testify to each item and putting the figures in the record. I don't want to do that unless I have to.

Attorney-General YOUNG: Well, so far as the contents of this estimate purport to be realities, it is based upon previous estimates, so that each one is part reality and part estimate. There ought to be some way of verifying them and reducing them to actuality.

Mr. HOW: I think perhaps you misunderstand. I will go through it if there is going to be any objection in that form. I can go through and ask him to testify orally to each one of those, but it is going to spread the record out interminably.

Counsel for defendants here consulted.

Mr. HOW: What is your conclusion?

Mr. O'BRIEN: We think you will have to prove your case, Mr. How, and proceed in your own manner.

Q. What, in your judgment, would be the cost of engineering for the reconstruction of the Northern Pacific Railroad sys-

tem, as it existed on the 30th of April, 1908?

A. $11,143,922.

Q. What, in your judgment, would be the cost of grading the Northern Pacific system as it existed on April 30th, 1908?

A. $88,755,696.

Q. What, in your judgment, would be the cost of constructing the tunnels on the Northern Pacific system as they existed on the 30th of April, 1908?

A. $4,638,637.

Q. What, in your judgment, would be the cost of constructing the bridges, trestles, and culverts on the Northern Pacific system as they existed on the 30th of April, 1908?

A. $20,676,683.

Q. What, in your judgment, would be the cost of ties, rails, frogs and switches, track fastenings and other material, ballasting and track-laying and surfacing of the Northern Pacific system as it existed upon the 30th of April, 1908?

A. $74,435,094.

Q. What, in your judgment, would be the cost of fencing the right-of-way and of constructing crossings and signs as they existed on the Northern Pacific system on the 30th of April, 1908?

Mr. OBRIEN: We object to that as incompetent, no foundation laid, and make the same objection to the last series of questions which have been asked in the same form.

The MASTER: You may answer.

Attorney-General YOUNG: In relation to that objection, I would like to ask the witness if his answer to the questions immediately preceding this one and his proposed answer to this one, do not consist of merely reading the figures on this paper before him.

WITNESS: They do, just at the present minute. I have worked these figures out, though, previously.

Attorney-General YOUNG: Are all of those figures based up-

on matters of which you have personal knowledge?

WITNESS: Except right-of-way.

Q. Well, you haven't testified to that in these last series?

A. No, sir.

Q. On what basis are you giving your answers to this present series of questions,—upon the basis of your own knowledge, or upon information from others, on knowledge and experience?

A. I would have to explain that.

Q. Well, explain it.

A. The first column is based entirely upon my own figures. The second column is based upon figures furnished by the auditor, which I have checked over on my own vouchers, from month to month as they are returned. Now, I have not taken the auditor's estimates as he returned them here of April 30, 1908, and gone through that check for this month, but I have previously.

Q. Haven't gone through the check for the last month, you mean?

A. No, sir, I have not. But I do know, in a general way, that they are correct.

Q. Up to April 30, 1908?

A. Up to April 30, 1908.

Q. You know that they are correct?

A. There might be some small difference, but in a general way they are correct.

Mr. How's question read as follows: What, in your judgment, would be the cost of fencing right-of-way and of constructing crossings and signs as they existed on the Northern Pacific system on the 30th of April, 1908?

A. $1,108,011.

Q. What, in your judgment, would be the cost of constructing interlocking and other signal apparatus?

A. $207,897.

Q. What, in your judgment, would be the cost of construct-

ing the telegraph and telephone lines?

A. $1,656,068. I would like to say, in connection with that, I missed that in my other items, that I did not check up that item, not for the difference between June 30 and April 30, 1908.

Mr. O'BRIEN: I assume that the objection that we made goes to all these same questions.

The MASTER: I was querying whether this could not be obviated and yet be made just as full by suggesting that the same answer will be made to each of these questions just as per this schedule from which the witness is reading.

Mr. HOW: I have suggested that without avail, your Honor.

The MASTER: And then, of course, every item is subject to cross-examination, but it is making rather a lengthy record unnecessarily.

Mr. O'BRIEN: I don't think there is any objection to that, is there?

The MASTER: Well, then, suppose we put it in that form, and then, of course, simply instead of getting there in the end, we get there at once, that is all.

Mr. O'BRIEN: The main ground of our objection is that the witness has not shown himself competent to testify to these facts, nor has a sufficient data been produced here to justify him in testifying to his conclusions. So far as repeating the same class of evidence to each question, we have no desire to require that.

The MASTER: That objection, I understand, would be interposed to each particular item on this sheet before the witness, and, of course, be subject to further examination and cross-examination upon his qualification to testify.

Mr. HOW: It is understood, of course, that the witness offers everybody who has had any hand in preparing this statement in assisting him, for examination, and offers the entire records of the corporation for examination.

The MASTER: In other words, they may call for any records—

Mr. HOW: Anything they want.

The MASTER:—or any witness from whom to get information?

Mr. HOW: Anything they want.

The MASTER: And they will be presented here.

Mr. O'BRIEN: Well, of course, we assume that we would have that right, without the offer of the witness or the counsel, but insist that this case must be proved in the same way that any other case would be proved, and that the witness must show the sources of his information, his opportunities and the steps taken by him and the details, his own details; that we are not compelled to grope around to ascertain whether or not the data was present or is in existence, but that that is an affirmative duty upon the part of the Complainant.

Mr. HOW: The testimony is being offered on the basis of what judges Thayer and Amidon said was the proper basis in the Keyes case in the 91st Federal. I want the Master to understand that. Now, if we have to produce every witness who has had anything to do with preparing this statement, we will not try this case in twenty years. It is an impossible thing, and it is born of necessity to make a statement of this kind. I don't assume that Mr. Darling has counted every culvert himself on the Northern Pacific system, but he takes the records of his office for that. Now, no one man has counted them all, and no one man can testify to the accuracy of any other man's count, and when we begin to go into that sort of thing we will have to produce probably hundreds, if not thousands of witnesses before we get through. We have got nearly eight thousand miles of road here.

Mr. O'BRIEN: Now, of course, what the counsel says with regard to the method of doing this work is largely true. The trouble with his position is that being upon safe grounds with regard to the method of doing the work, he confuses it with the

proper method of proving the work. It is entirely true that nobody would expect each person who counted the ties and each person who estimated the cost of a certain number of ties or the cost of a certain fill upon the road, to be produced here as a witness, but it is equally true that the witness who testifies in the case should produce the information upon which he based his calculations, or he does not show himself competent; and if that information includes the mathematical computation of a clerk or a subordinate in his office, nobody will attempt to object to it. We expect to offer exactly the same evidence in this case, prepared in exactly the same way ourselves, but when we do it the details of that evidence will be presented to the Master and to the other side so that they can analyze it and determine whether it is correct or not. We have got here a summary of a mass of figures, and are asked, if we are not entirely satisfied with that, to go down and endeavor to satisfy ourselves by groping around the records of the Northern Pacific road.

Mr. HOW: Well, we will not bring those records into this Court and offer them in evidence in this case. I declare that now. You have opportunity for examination of them and for examining any witness that you want to in the employ of the railroad, but we will not put the records of the Northern Pacific Railway Company into evidence in this case.

The MASTER: I don't understand that that is what Mr. O'Brien calls for. I understand Mr. O'Brien's position is this: Produce a copy of a record, or produce a copy of a statement made by a clerk; he don't ask that the records of the Company be produced here, but that copies of papers or computations on which the witness bases his testimony be furnished at this time.

Mr. HOW: We don't propose to produce copies of the records in evidence in this case.

Mr. O'BRIEN: Well, of course that is a matter that the counsel is supreme in. He can prove his case as he desires, but we

shall certainly insist upon our proper objections. There is no possible way that we can meet this testimony, and there is no proper way that I know of that anybody can arrive at the facts unless the basis for the calculation is produced in court. And we desire to say now, that from now on we intend to insist that when any person attempts to testify with regard to an ultimate fact, or a conclusion of fact, or an estimate, or a calculation, we shall demand that the basis of his calculation be presented to the Master before he is permitted to testify to his conclusions.

The MASTER: It will be understood, then, that this objection that you make here will apply to all of this testimony and to each item concerning which the witness may testify, and so far as it is applicable, you have the benefit of the objection, but it is not for the Master to rule upon it.

Q. What, in your judgment, would be the cost of constructing the telegraph and telephone lines of the Northern Pacific system as they existed on the 30th of June, 1906?

A. $1,443,000.

The MASTER: Well, isn't it consented to here that it may be understood and taken that the same question is asked with reference to each of these items that may follow No. 17 to the end, and that the same answers will be given as shown by the exhibit, this first sheet of exhibit 2?

Mr. HOW: If I understand counsel right, it will not. I should be very glad if it would, because it strikes me as making an unnecessarily long record.

The MASTER: I understand counsel consents to that, subject, of course, to the objection which he has made, and which will apply to each item.

Mr. OBRIEN: I think the Court understands the objection we made, just as it is stated by your Honor.

Mr. HOW: So do I.

The MASTER: Isn't it consented that it may take that course

without making these objections separately, and conceded that that will be the testimony in this case, and the only question is as to its competency?

Attorney-General YOUNG: That is all right.

Mr. HOW: Now, I propose to go through also the separate items as of the date of June 30, 1906, unless it is also consented that he will testify to the items other than those specially excepted by him, in accordance with the figures in this statement.

The MASTER: I understand he has explained very fully just how this statement is made up, and that his testimony will apply and be the same with reference to both of the columns and in accordance with what he has already stated, and to that there is no objection except that the defendants object to all of this testimony (except where he may have made special explanation) upon the ground that no foundation is laid.

Mr. HOW: Yes.

Attorney-General YOUNG: Yes, and without abbreviating our right to cross-examine at all.

The MASTER: Not at all.

Mr. HOW: Oh, not at all.

Q. Won't you describe the method of constructing a line of railway, Mr. Darling?

A. After it is ready for construction, or from the time of its inception?

Q. From the time of its inception.

A. After it has been decided that a certain district is to be served, then the question how it is to be served, whether by a main line or an extension of the main line or by a branch line, or by some line that will afterwards be used as a main line. Then parties are organized to go over and make a reconnaissance to see where such a line should be located. Several routes are examined; all possible routes are examined. Then preliminary parties, locating parties are organized, and these

surveys made, and after full and complete estimates are provided and submitted, from those estimates and reports it is decided what kind of a line to build. After it is decided what kind of a line to build, the engineer that goes out to locate it is told how much business to provide for; that is, he is told how many trains per day that he will have to locate for, and he locates his line accordingly. After his location is all completed and the work is authorized, then we generally advertise for bids for the clearing and grubbing and grading, and bridging, and sometimes (generally) for the laying of the track and the surfacing, the material all being furnished by the railway company, except in some instances we contract with men and companies to furnish the material for buildings and for bridges, that is, timber bridges; the companies generally build their own steel bridges. Then, after the contractors have completed their work and the construction department have completed their portion of it that remains, it is turned over to the company for operation.

Q. What is its condition for operation when turned over under such circumstances?

A. Well, the condition is as good as you can make it, but it is impracticable to make a road-bed so that they can make the time and do the work which they can do in a few years afterwards. In other words, the first thing the operating department do, when we turn a piece of road over to them, is to put on a very slow schedule because the banks sink, the slopes of the cuts fall in, and it is dangerous and impracticable to operate at a high speed, and it is only after several years of work, cleaning out of ditches and sloping and re-sloping of cuts and filling out of embankments and raising up of the track that it is in shape for high speed.

Q. Supposing the business of the road increases over that that the engineer has been told to allow for, what must be done?

A. He must use some means of improving the road so as to

operate more economically, generally by change of line for high speeds, getting flatter curves for high speeds, and lower grades for better operation, longer train loads; that is, getting material over the road more expeditiously than with short trains.

Q. What things in a railroad depreciate and what appreciate as time goes on, if the road is properly taken care of?

A. Anything above the foundation, which is the road-bed itself, depreciates. The road-bed itself appreciates very materially.

Q. What, in your judgment, is the comparison between the appreciation and depreciation of a railroad line?

A. Why, I could not give that in dollars and cents, except to say that the longer a road is maintained in proper condition, the better it is as an operating tool.

Q. The more valuable?

A. Yes, sir; it is more valuable because you can operate it more economically, and serve the public better.

Q. What, in your judgment, is the value, as an operating system, of the present Northern Pacific system, as compared to a reconstructed Northern Pacific system.

Mr. O'BRIEN: That is objected to as incompetent, irrelevant and immaterial.

The MASTER: That is, reconstructed at the present time?

Mr. HOW: Yes; the ultimate fact to be proved.

The MASTER: And assuming that it could be reconstructed along the same line?

Mr. HOW: I want to compare a twenty-year-old system which has been properly taken care of with a new reconstructed system.

The MASTER: That is what I supposed was the purpose of the testimony.

Mr. HOW: The ultimate fact that the Master must find is the value of this system. One of the elements is the cost of the construction,—reconstruction at least. Now, if this witness

desires to testify that the road, as it stands, is very much more valuable as an operating tool than a new reconstructed road, I want him to do so; if he doesn't want to, if I hadn't thought he would, I wouldn't have asked him.

Attorney-General YOUNG: That is very likely, but isn't it true that the total cost of constructing a theoretically equal road is embodied in your estimate here? Isn't that the basis on which this estimate is made of reproducing that road as it now stands? Now, are you going to add something to that?

Mr. HOW: Yes; we are going to add a lot to that,—millions and millions of dollars, before we get through, and hundreds of millions. We are going to get the whole thing in before we get through.

The MASTER: I suppose, in making estimates, the cost of all these changes and improvements have already been included in his estimate?

Mr. HOW: The Supreme Court of the United States says that one of the elements to be considered, in determining the value of a railroad upon which we are entitled to a return, is the cost, and that there are other elements to be considered. What the Court must finally find is the value of the system. Now, he testifies to the cost. If he is willing to testify that a twenty-year-old road is much more valuable than a road originally newly constructed, I want him to do so, even though he cannot testify as to dollars and cents of its value, nor what it costs to make it more valuable.

The MASTER: I was just suggesting that, of course, it would be proper to take into consideration that there had been large expenditures since the road was constructed for the purpose of giving it its now large value over a road which had been just constructed, where all of these changes and improvements would have to be made. Proceed.

The question was read: What, in your judgment, is the value, as an operating system, of the present Northern Pacific

system as compared to a reconstructed Northern Pacific system?

Attorney-General YOUNG: It is further objected to as purely speculative in its character, because the witness has failed to show himself competent to testify to any such supposed increased value.

A. Very much more valuable, as an operating tool.

Q. And will you explain why?

A. This estimate is based on producing a road equally as good as the Northern Pacific system to-day, but it lacks the element of time, and it is impossible to get the railroad that we have got to-day without time, and you can't get it in the ten years which it takes to complete this road.

Q. Why does time enhance the value of a road?

A. The banks must settle, and the ballast must get down in and find its foundation, the slopes must be cleaned off, and the loose rock and stone that drop down by the frost in the spring must be cleaned away, the ditches cleaned out year by year until the slopes are as clean as is practicable to get them; every year they get cleaner, and the slopes of the banks which are generally built from about one and a half to one, the water cuts the corners off, and they flow down on the slope and make a very much flatter slope on the bottom. So that, as a rule, a bank would represent a curved surface instead of a straight surface, as it does. But those shoulders that wash off are being continually filled out, and the cuts are cleaned out every year. That is going on continuously; more in the spring than any other time, and it is impossible to get those things with a newly constructed road.

Q. Cannot that all be done in the first construction of a road?

A. No, sir.

Mr. HOW: You may cross-examine.

Mr. YOUNG: Was this examination preliminary to offering this exhibit in evidence?

Mr. HOW: The exhibit has been offered.

The MASTER: Is this all of the witness' testimony so far as you expect to examine him in this case?

Mr. HOW: As at present advised.

The MASTER: Since the witness' testimony is concluded, if counsel desires, we will take a recess until 2 o'clock.

Recess until 2 P. M.

AFTERNOON SESSION.

Mr. HOW: I would like to continue with Mr. Darling to some extent with regard to these detail sheets.

By Mr. How.

Q. I show you page in your exhibit headed "Details of Grading." It contains a statement of clearing 22,036 acres,—how do you arrive at those figures?

A. That was taken from my records.

Q. At $80 per acre. How do you arrive at that price?

A. That is the average price that it would cost the railroad company to do that grading.

Q. That clearing?

A. Yes, that clearing, over the whole system.

Q. How does that compare with the present prices?

A. Well, it is practically the same as present prices. Our prices vary all the way from $35 to $250 an acre; and the greater part of our clearing is in Washington, where we have to pay from $75 to $250 an acre.

Q. Is that, in your judgment, a reasonable average price?

A. Yes, sir.

Q. "Grubbing, 30,851 stations," how did you arrive at those figures?

A. The quantities, those are from our records.

Q. At $16.50 per station?

A. That is practically what we pay by contract, but I have the details of those prices, how they are made up.

Q. Are they in here?

A. Yes, sir.

Q. Earth, 116,412,694 yards,—where do you get these figures?

A. Those are made up directly from our records. That is, that portion of those quantities is taken from our records, on the basis of what the original section was constructed at, but since that time our standard has been materially changed, we have enlarged or widened the cuts, widened the embankments. Originally those cuts were taken out to eighteen feet and twenty feet; to-day they are taken out to twenty-four and twenty-six feet; the embankments were originally built from ten to fifteen feet; to-day our standard is from sixteen to eighteen feet. Now, I have added to the quantities which we have gotten from our profiles, twenty per cent for the additional enlargement of the section.

Q. At twenty-eight cents a yard?

A. That is the price, the average price it would cost the railroad company for moving that portion of material designated as earth.

Q. At present prices?

A. At present prices, yes. That is on the basis that the work could be done in ten years. All my prices are based on that.

Q. Hardpan, 38,703,637 yards. Do you arrive at those figures in the same way, from your records?

A. I want to just say, in connection with that, that the quantities are practically from the records with the increased enlargement, but the classification is arbitrary, entirely, and the classification is based on this: that I know or can form a very good idea of what it costs to move rock on the system, I know very closely as to what it costs to move other classes of material on the system, not including rock but including loose rock, hardpan, cement gravel, clay and materials of that kind.

Now, this was classified in this way, then it was averaged to get at the average price outside of the rock. Well, the average price outside of the rock came pretty low, it came low compared to what I would estimate it at. That is the average price as shown here. The average number of cubic yards of material per mile figures at 28,000 yards. Now, anybody that is acquainted with railroad work can form a general idea of how the Northern Pacific system would run per mile of main track.

Q. Have you formed such an idea?

A. Yes, sir.

Q. What is that idea?

A. I think that is low for the number of cubic yards per mile.

Q. You think it is a moderate estimate?

A. Yes, sir. I have divided the number of the cost of grading by the number of cubic yards and obtained 36.8 cents per cubic yard for all material, including rock, which appears to be a very low estimate.

Q. You have arrived at these figures with regard to hardpan, loose rock, solid rock and riprap, and the prices, in the same way that you have these others that you have testified to?

A. Yes, sir.

Q. You have a page of your exhibit headed "Cost of One Mile of Main Track—Average Haul for Steel and Trimmings, 1,000 miles, at 0.4 cent per ton per mile." How do you arrive at those figures?

A. Well, the distance of 1,000 miles represents the center of gravity of that material, delivered from the points of receiving the material, which would be St. Paul or Minneapolis or the head of the lakes.

Q. The average distance, you mean?

A. Yes, sir.

Q. Is 0.4 of one cent per ton per mile a reasonable estimate?

A. It is low. We are really charged 0.5 of a cent per ton mile.

Q. Average haul for ties, 400 miles, 0.4c per ton per mile,—What have you to say with regard to that distance?

A. That is the average distance at which we haul ties.

Q. From where?

A. From the point of delivery where they are purchased.

Q. And is 0.4c per ton mile a reasonable charge?

A. It is a low charge.

Q. "Average weight of angle-bars, 7.3 tons per mile."

A. That average of 7.3 tons is obtained in this way: We went over our records and got the number of tons of steel in the main line and then divided the number of tons of steel by the number of miles and got the average weight of steel per mile for the system and that determines the average weight of the angle-bars.

Q. Is that accurate?

A. That is accurate.

Q. "Average weight of bolts .75 tons per mile."

A. In the same way.

Q. "Average weight of spikes, 3.4 tons per mile."

A. Well, spikes always is so much per mile.

Q. You have priced "Steel, f. o. b. St. Paul, including two handlings in transit, 117 tons, at $31 a ton."

A. Yes, sir.

Q. What was that $31 a ton based on?

A. It costs us about $29.90 in St. Paul or Duluth. Then we have to handle it at Duluth and we have to handle it perhaps once more on the road and once again in the material yard, and that one dollar per ton for handling means the handling at the docks and the handling on the road.

Q. What have you to say in regard to the reasonableness of that allowance?

A. I think it is low.

Q. "Angle-bars at $34 a ton."

A. That is gotten at in the same way as the steel is.

Q. And does that same explanation apply to bolts, spikes, and tie-plates?

A. Yes, sir.

Q. "Cost of material-yard and work therein, 135.95 tons at $1."

A. That is the unloading of the material in the yards, which is not included in contractors' prices. It includes the laying down of material-tracks, and taking care of them, the getting of material out there for those material-tracks and the taking up afterwards and the loss of ties in connection with the material-yard.

Q. What have you to say with regard to the reasonableness of that allowance?

A. I think that is a fair allowance.

Q. "Contract cost of laying track $375.50,"—per mile does that mean?

A. Yes, sir; that is exactly what we pay the contractor.

Q. At the current prices at that time?

A. Yes, sir.

Q. "Cost of one extra switch per mile, $27.50."

A. That is the average. We average about one switch per mile in construction and would average that if we reproduced that system. We pay the contractors in addition to that price of $375.50 a mile $25 per mile for every switch put in. Now, in addition to that $25 it costs us about $2.50 for transportation. That is the way the $27.50 is made up.

Q. Transportation outside of the contractors' obligations?

A. Yes, sir.

Q. "Rent of equipment, train service and hauling to the front, $375 per mile."

A. Well, that is made up of an average of what it costs us to furnish the materials and furnish the train service for the

contractors, and our own transportation in hauling material to the front, and work-train service.

Q. What have you to say with respect to the reasonableness of that?

A. It is a reasonable allowance.

Q. "Ties, 3,000." What does that mean,—3,000 to the mile?

A. Yes, sir.

Q. How do you get at that figure?

A. Well, that is about the average we are putting in. We put in from 2,880 to 3,200 ties per mile on the main line. On the side-tracks, spurs, and light branch lines 2,880 ties to the mile.

Q. At 55 cents a tie; is that based upon current prices?

A. Well, it is based on the prices, as all others are based, if we had to build that line in ten years, and it is very close to what we are paying now.

Q. "Ballast, 3,000 cubic yards, at sixty cents per yard."

A. Yes, sir.

Q. What have you to say with regard to the reasonableness of that?

A. 66 cents a yard is very much lower than we are paying in Minnesota, than it is costing in Minnesota to-day. I have those estimates here.

Q. "Transportation of ties, rails, etc., $1,023.80."

A. Yes, sir; that is based on rail being transported one thousand miles and the ties an average of four hundred miles, each.

Q. "Ballast, contract price, twenty-seven cents.

A. That is what we pay the contractor for loading onto cars, unloading at the front, and putting under the track. Now, in addition to that, it costs the railway company the shovelling, the cost of the ballast-pit, the cost of laying the track, the original track in the pit, the furnishing of the material and getting it there and taking it up, and the train service, and all work incidental thereto, with the exception of the labor

of putting that under the track. We furnish all kinds of equipment.

Q. You have a page headed, "COST OF ONE MILE OF BRANCH LINES." Why is there a difference between the cost of a mile of branch lines and of main track?

A. In this statement I have put branch lines, sidings and spurs together, and I have gotten at the quantities and prices exactly as appeared in the main line except that I have entered the steel taken, the number of ties, the steel in all those tracks, and divided it by the mileage and got at the number of tons of steel in that particular track. Angle-bars, bolts and nuts and spikes the same way.

Q. What is the difference, if any, between the steel in the branch lines and the main track?

A. In the branches 97 tons per mile, and in the other 117 tons per mile.

Q. Those figures, you say, are gotten at in the same way as those with regard to the main track?

A. Yes, sir.

Q. State whether or not they are, in your judgment, accurate?

A. They are accurate. That is, the quantities are.

Q. And the prices?

A. The prices are reasonable.

Q. You have a page headed, "COST PER CUBIC YARD FOR GRADING," earth, contract price twenty-two cents; hard pan and cement gravel, contract price 35 cents; loose rock, contract price 42 cents; solid rock, contract price one dollar; clearing, contract price per acre $75; grubbing, contract price per station, $15; rip-rap, contract price per yard $1.75. State how those contract prices, respectively, compare with present contract prices that you are paying.

A. Well, they are very nearly the same.

Q. And do the contract prices that you now pay vary?

A. Yes, sir.

Q. How have you determined those figures?

A. In the first item, contract price for earth, that is what it would cost, that is what we would have to pay a contractor for moving the average earth on the system a distance of six hundred to eight hundred feet,—well, a distance of five hundred feet. The over-haul is an additional price which we have to pay them that they haul over a thousand feet. Our contracts provide that after they have hauled a thousand feet they will get what we call the contract price, and then, in addition to that, every one hundred feet that they haul over a thousand feet we pay them an additional one cent per cubic yard. Now, I figure that the average haul on our whole system would be about three hundred feet beyond the thousand-foot haul and that the transportation per cubic yard would be three cents.

Q. What do you mean by the transportation?

A. Getting men and material, plant and outfits, onto the work and off of the work, and the extra bills that we have to pay the contractors for ditching and work that cannot be seen when they bid on the work, and it is not included in the contract.

Q. Do you know whether or not other railway companies customarily make the same manner of contract?

A. Yes, sir.

Q. What is the fact?

A. I don't know just what contract you have reference to.

Q. I mean with regard to over-haul.

A. Yes, sir; those are in the specifications. Some roads—a great many roads—have different specifications but they are practically based on the same thing. Some have a haul of six hundred feet, some of a thousand, and some twelve hundred, but the original price would vary with the haul.

Q. What have you to say with regard to the reasonableness of those figures on that page?

A. I think those figures are reasonable.

Q. You have a page headed, "COST OF TUNNELS, single track tunnels lined with concrete." Will you state how you arrive at those quantities?

A. The quantities are taken from our records.

Q. And how did you arrive at the prices?

A. The prices are taken from what I know it costs to drive a tunnel, and what we are actually paying today for tunnels.

Q. Are you driving tunnels anywhere at this time?

A. Yes, sir.

Q. How do these prices compare with your present prices?

A. Well, you see these prices are made up of what we pay the contractors on their work. It is very close to what we are paying the contractors and what it is costing the company today.

Q. State whether or not those figures are, in your judgment, reasonable.

A. Yes, sir, they are.

Q. And whether or not the quantities are accurate.

A. The quantities are accurate.

Q. It is not a question of judgment?

A. No, sir, not in tunnels.

Q. "AVERAGE COST OF TURNOUTS," you have a page headed.

A. Yes, sir.

Q. Please state with regard to that.

A. That represents an average turnout. It is a switch and includes everything from the head-block to the frog.

Q. What have you to say with regard to the reasonableness of that allowance?

A. That is a reasonable price, but it is not accurate as far as our turnouts in the track are concerned. A great many of our turnouts vary and it is impossible or impracticable to get over the whole line and pick out each individual turnout and

make an estimate of it, but this represents the cost of our average turnouts, and it is applied to all turnouts.

Q. Is it, in your judgment, reasonable?

A. Yes, sir.

Q. You have a page headed, "BRIDGING N. P. SYSTEM."

A. That bridging is taken entirely from our records, from current prices.

Q. The quantities and prices are taken from your records?

A. Yes, sir. That is for the permanent bridges, but for timber bridges the quantities are taken from our records, but the prices are matters of judgment, and it is estimated, I believe, at ten dollars per lineal foot of pile bridging. Now that cost per lineal foot is taken from our standard plans at the current prices.

Q. Is it, in your judgment, reasonable?

A. Yes, sir.

Q. You have an item, "Fencing, 4,575 miles at $150 a mile." How did you arrive at those figures?

A. Those figures, as far as quantities are concerned, came from our records; and the price is a matter of judgment. I will just say, though, that the price of fencing varies from $130 to $250 and $300 a mile.

Q. Is that allowance reasonable, in your judgment?

A. Yes, sir.

Q. "Water supply (including tanks, stand-pipes, wells, pipe lines, etc.) $1,971,200." How did you arrive at that?

A. It was impracticable to detail that, and I had to get an average water station and multiply that by the number of water stations.

Q. What is your judgment with regard to reasonableness?

A. It is too low.

Q. Wharves and Docks (1,750,000 square feet at seventy cents.)"

A. Seventy cents a foot is the average price of our docks.

The quantities are taken from our records.

Q. "Coaling stations, $635,936." What do you say with regard to that?

A. Our coaling stations were divided into classes. We have coaling stations of different classes and we have the average current price of each class of coaling station. We take each class of coaling station from our records and multiply it by the cost per class and obtain the figures there.

Q. What do you say with regard to reasonableness?

A. That is reasonable.

Q. "Stockyards (3,412,000 sq. ft. at four cents.)" What do you say with regard to that?

A. That is reasonable. That is obtained in the same way as the other.

Q. "74 track-scales at $1,300 each."

A. We took the number of track-scales on our records and multiplied by the average cost per track-scale.

Q. What do you say with regard to its being reasonable?

A. It is very reasonable.

Q. 3,464 cattle-guards at $15.

A. Those are taken from our records, multiplied by the average price of a cattle guard.

Q. Do you think that is reasonable?

A. Yes, sir.

Q. Round-houses, turn-tables, power-houses, etc., frame $1,300 per stall; brick, $2,100 per stall; turn-tables, $5,000 apiece." What do you say with regard to that?

A. It is low. I would like to say about the round-houses that it includes everything in a round-house, including the heating and ventilation and track in the house.

Q. How do you arrive at the number?

A. From our records.

Q. "Shop buildings (brick, one-story, $1.50; brick, two-story $2.50; and frame $1 per sq. ft.)."

A. The quantities were taken from our records; the prices are reasonable. I want to say, in connection with those prices, they are all taken from our standard plans, they are averaged from our plans of buildings.

Q. I think perhaps I need not go through the rest. State whether or not you obtained everything of that kind in that same way?

A. Except headquarters building. That is what it actually cost us at that time.

Q. The headquarters building?

A. Yes, sir.

Q. That is put in at the actual cost?

A. Yes, sir.

Q. You have a page headed, "Terminals, Real Estate and New Mileage, exclusive of Roads purchased, from June 1st, 1906 to November 30, 1906," and another page of the same thing from November 30, 1906, to May 1, 1907, and another page from May 1, 1907, to April 30,1908. Those figures, I suppose, represent actual expenditures?

A. Yes, sir.

Q. What do you know in regard to those expenditures,—as to whether or not they were made?

A. I know as well as anybody can know who has been furnished that by somebody else. That is one of our employes. These records are kept in the auditor's office. They act as our clerks in the matter. We have to approve all these bills, so that there can be no charge against construction without approval from our office. It goes from there to the auditor. The auditor sends us a monthly statement showing exactly what he has charged against each particular piece of work. That has to be worked out against our estimates. Our estimates are put in this same form. We have our estimates in one column and the charges in another column, and we check this column against that column, knowing exactly what amount of work

has been done, so that after we get all through we know that that column is correct.

Q. Do you know whether or not all those items have been checked over in your office?

A. Well, they have not been checked over in detail. They were checked over about a month ago, but those have not been checked over in detail. But I would just like to say about this column headed "Whole System" the additional improvements,—that does not represent completed work, that is work under way, and I know those charges are away below our estimates and represent about the amount of work done. There is no other way of getting charges in there.

Q. And so in regard to all three of those sheets with the column headed "Whole System?"

A. Yes, sir.

Q. There is a page headed, "IMPROVEMENTS & BETTERMENTS CHARGED TO INCOME," on the whole system. Will you state what information that page is meant to convey?"

A. It is improvements to track and consists of various items here, right of way, change of line and grade, widening embankments, ballast, etc., increase in weight of rails and fastenings, spur-tracks and so forth. It has been charged to income account in our books to-day.

Q. And has that money been actually expended as represented there?

A. Yes, sir. I must take the auditor's figures for that; I have not checked those up.

Q. But it went through your department?

A. Not that, no, sir. We have to make an estimate of every one of these items before any work is done, then that has to go through a thorough approval, but the vouchers and the costs of this work do not come to our office again.

Q. Mr. Darling, how long would it take you to furnish full details of the grading of the Northern Pacific System?

A. You mean an accurate detail so that I could swear to the quantities?

Q. Yes.

A. Without using judgment?

Q. Yes.

A. It would depend upon how many men I employed. Five men would do about a quarter of a mile of work a day. Now, you multiply the number of miles by four, and that by seven, and get the number of men and days' work and you get at that estimate. It would be not far from $150 a mile.

Q. For the whole system?

A. Yes, sir. But that means you must go on the ground and get these details; you can't get it in any other way.

The MASTER: That is, based on actual measurements?

WITNESS: Yes, sir; no other possible way of getting it.

Q. Are you able, from your experience in railroad work, to make a fairly accurate estimate of the number of yards of earth to be hauled in any given mile of track-making?

A. Yes, sir.

Q. Have you made a study of the Northern Pacific system for the purpose of estimating the average amount of earth necessary to be hauled in constructing the same?

A. Yes, sir.

Q. Will you state how your opinion compares with the figures given in this estimate from your records?

A. The estimate for the number of cubic yards per mile is low.

Q. There is a sheet I have overlooked. It is headed, "Estimated Cost of Track Material, Track Laying and Ballasting." There seem to be certain quantities, that is, miles, and certain prices for material and transportation. State, if you please, how those prices for material and transportation are arrived at.

A. The prices of the number or quantities of ties, of course,

are approximate. It is impossible to count the number of ties in a mile of track, but that is very close to the average of our main track and branch lines.

Q. What do you say with regard to the reasonableness of the figures?

A. Those figures are reasonable.

Q. And the accuracy of the quantities on that page?

A. Well, the rails and fastenings are very accurate; the ties are not accurate; the ballast is not accurate but it is very low. I would like to say about ballasting that we renew our ballast every eight to ten years, and the more ballast we put on, the longer the new ballast will last, because ballast wears out by going down into the road-bed; the more ballast we get in the less rapidly it goes in for the new ballast we put on, so that this ballast, although it represents pretty closely to what we have got today, it does not represent the ballast that has gone down into the road-bed, which we can't tell anything about—and that is one of the things that goes to make the appreciation of a railroad.

Q. Is that, in your judgment, a reasonable estimate of the entire cost?

A. Yes, sir.

Mr. HOW: You may cross-examine.

Attorney-General YOUNG: We will say, your Honor, that we probably cannot finish the examination of Mr. Darling right away, as the information contained in these tables that he has furnished is very extensive, but we will start on the examination and we shall want to examine him further.

Mr. HOW: I can only say that I have examined Mr. Darling at an earlier time than I should have felt prepared to (I never saw this statement myself until six o'clock last night) on account of the fact that he is very desirous of getting away, having a large amount of work in the West, so that if you can con-

veniently hurry in your preparation, of course he will be at your service.

Mr. O'BRIEN: How long is he going to be gone?

WITNESS: I would like to be gone a month.

Attorney-General YOUNG: We could cross-examine him when he comes back.

Mr. O'BRIEN: I imagine in all cases we can recall a witness for cross-examination on either side.

Mr. HOW: Oh, yes, he will be at your service.

The MASTER: I presume very likely it may happen that the examination of some witness may be continued up to a certain point, and you cannot go any further just then because he may be obliged to qualify himself in order to testify further, and of course this he would be expected to do.

CROSS-EXAMINATION.

By Attorney-General YOUNG:

Q. Mr. Darling, as I understand it, you have eliminated from your testimony any estimate or opinion as to the value of right-of-way, and station grounds and real estate?

A. Yes, sir.

Q. I would like to have you make clear just what is meant by the heading on column 1 of Exhibit 2, in which the language is used "Estimated Cost as of June 30, 1906." I believe you stated partially this morning. Will you kindly state just what was the basis of that alleged estimate?

A. This estimate was made from our record and from general knowledge of the work.

Q. Well, how much of it, from your records, and how much from general knowledge of the work?

A. I think I have testified that the quantities were made from our records for the standard to which that railroad was built. Afterwards, or since the road was built, the standard has been changed, the banks have been widened, slopes have

been filled out, cuts have been widened and the general standard has been changed throughout. Now, in order to conform to that standard, I have added to the quantities twenty per cent, which represents the average new section as compared with the old.

Q. Well, do I understand, then, that all of the matter contained in column 1 of Exhibit 2 is a matter of record in your office, except that you have increased it by twenty per cent?

A. The only thing that is increased twenty per cent is that particular item of grading. The other items are all practically matters of record that have not been increased in any way.

Q. Well, are they in fact matters of record or not? Let us understand each other.

A. They are, in fact, matters of record.

Q. Altogether?

A. Yes, sir.

Q. In what way are they matters of record? Have you a record in your office of what the construction of the Northern Pacific line cost, in the first place?

A. I don't think so, no, sir. This has nothing to do with that.

Mr. HOW: I think you mean the quantities are matters of record in your office?

WITNESS: Yes, sir; from a profile. We have some quantities and some we have to take from our profile of newly acquired lines and lines purchased. Now, for instance, on that item of tunnels we have every bit of record for that item.

Q. Is there any record in your office of that line original cost?

A. I don't think so.

Q. What has become of that record?

A. There is a lot of these lines that have been purchased, of which they never had any record. All they had was purchase price.

Q. In acquiring lines don't you get, with the purchase, all of the records relating to their construction?

A. No, sir. We ought to, but we do not.

Q. You don't?

A. No, sir.

Q. Do you know why?

A. No, but I know if I go to look up the record I don't find it. I presume, in transferring, there is a lot of this stuff lost, and in transferring the records from one place to another that there is a lot of the records lost. I have reference more particularly to maps and profiles and quantities that would go to make up the cost of the railroad.

Q. Have you any record with reference to the original cost of any part of the road?

A. Oh, I presume there are; I know, in our office, we kept records for several years of particular pieces of work and some of those particular pieces of work we have a complete record of.

Q. Those would be branch lines that were constructed since the present company acquired the road?

A. Yes, and some portions of the main line; that is, what it cost originally.

Q. In making up the estimate of the quantity of grading did you obtain the information from the profiles, from the original records or original contracts?

A. Both; and wherever we had original records we would check them with the profile; so, as a matter of fact, our profile was our basis to work from, but oftentimes you cannot work from a profile.

Q. Why?

A. For instance, going along the side of a mountain or on the side of a river, you can't tell by a profile anything about how much quantity there is in it. Now, I know all along the Yellowstone, from Glendive to Livingston, from Garrison to Missoula, and all the way down to Clark's Fork, the profiles

wouldn't give you any idea of the amount of work done in the building of that road-bed; neither would the quantities estimated by the contractor give you an idea of the amount of work done in building that road-bed. After the work was all completed and the contractors away, they put in men all along the Yellowstone to slope down these cuts, to go away back into the bluffs and into the hills, and take the material and cast it over into the river. Where they built along the Clark's Fork, Mr. Hallet, superintendent of construction, would go into the hill, and put a hole in, blow out the mountain-side, and locate his line on that. Of course it was the cheapest way of doing it, but at the same time the profile would not show anywheres near the amount of work done. Now, we never had any estimate of those quantities. Those things you have got to have judgment for, you have got to know the conditions under which that line was built.

Q. Your contract was let with reference to profiles?

A. Yes, sir; that is, they used that to judge by, but they go over the ground with the profile. No contractor would bid on the profile.

Q. And the terms of the contract for construction are sufficiently elastic so that any extra work that arises is taken in and allowed for in the settlement?

A. Yes, sir.

Q. Well, now, I would like, if I can, to get at just to what extent one could find out from the records in your office the original cost and to what extent he would have to be governed by computations made from your profiles and estimates.

A. The proper way to make an estimate would be to take our records and our profiles, and get all the information possible from the records and from the profiles in the auditor's office and everywhere, and then go out onto the road and estimate that, piece by piece, from beginning to end. And even then you can't get at the classification.

The MASTER: Was that done in this case?

WITNESS: No, sir.

Q. Well, in what way were you guided, then, in making this estimate, if you didn't do that?

A. Well, as I stated, the main item would be in grading, and I took our grading quantities and multiplied them by 20 per cent, in order to provide for the enlarged section. But, those other items I don't know anything about, and I can't tell anything about; the dumping of material into the river, we don't know anything about; and the grading down of the slopes, that is provided for in the contingencies and you can't get it in in any other way.

Q. That is covered by your allowance for extras?

A. Yes, sir; contingencies.

Mr. HOW: I might say that we shall furnish you all the evidence there is or that can be obtained with regard to the original cost of construction of this system, but it will not be this witness' testimony, it will be from the books of the comptroller.

Attorney-General YOUNG: You expect to furnish those books, do you, before the case closes?

Mr. HOW: We will furnish you access to the books and furnish you a statement from them. We will furnish you all the information there is with regard to the original cost of the Northern Pacific system.

Q. Now, you did not, Mr. Darling, at any time make such an examination of the road, and of the properties pertaining to it, as would amount to an inventory so that you know just exactly what is there?

A. Well, we have an inventory of everything excepting the grading. Now, the grading I only know from my own knowledge. I know every foot of that ground; I have been down under every bridge and every culvert over every waterway there is between here and Spokane, several times, and some

of them west of Spokane, and I know the conditions about as well as anybody of the sections and of the conditions of our track, but I never have taken this estimate and gone over that track, piece by piece, except in my own recollection, and compared it and made proper allowances.

Q. So that you have applied to that part of the work your best judgment?

A. Yes, sir.

Q. When you first entered the employ of the Northern Pacific Railway, the portion of its road located in Minnesota had already been constructed, had it not?

A. Part of it. The main line had.

Q. And your work has been devoted mostly to the newer part of the system, the western part?

A. Everything; everything connected with the railroad. My construction work has been mostly west of the Missouri river, and some branches east of the Missouri river, but the maintenance-of-way work has been entirely on old lines.

Q. Your estimate of track-laying and the cost of ties and everything of that kind, so far as it enters into your estimates, has been derived from your knowledge of the cost of those matters in the newer parts of the system?

A. Well, the older parts and newer parts, both.

Q. Of course you did not construct nor lay the ties, except for the purpose of repair, on the old parts?

A. No, sir, except the branch lines that have been built and the new lines that we have changed. I had charge of construction from Minneapolis to Sauk Rapids, 72 miles of the old line; I had charge of the contruction from Little Falls to Staples of the old line; I had charge of the second track work from Staples through to Glyndon and the various changes of line and grade in there; I have had charge of the several branches in North Dakota; had charge of the Brainerd & Northern extension and the Big Forks and International. That is all in

Minnesota. I built all those yards at the head of the lakes. That is all new track.

Q. Have you ever, at any time, undertaken to estimate the value of the line in Minnesota?

A. Yes, sir; that is, I have taken details that others have worked out and have checked it up.

Q. You have not included that information in this testimony?

A. It is not in this sheet.

Q. Nor any of these sheets that are annexed to it?

A. No, sir.

Q. How did you get at that value, what did you do to ascertain the value?

A. The value in Minnesota?

Q. Yes.

A. My office has furnished a great deal of information to Mr. Kimberly, who recently made up a statement of the cost of the lines in Minnesota, and it has been furnished the Railway & Warehouse Commission, I think. Now I have taken that estimate and gone through it. Some of the items I have had to change because I did not agree with them, but in the main the items were all right, and I have checked those over and made up an estimate of the lines in Minnesota.

Q. Starting out with Mr. Kimberly's work?

A. Starting out with Mr. Kimberly's work — which was mostly work from my office.

Mr. HOW: Have you that here?

WITNESS: Yes, sir.

Mr. HOW: Produce it for them if they would like it.

Q. Did you use the same method of computing the various details of cost in reference to the Minnesota lines alone that you employed with reference to the cost of the lines of the entire system?

A. No, sir, because I had a great many more details in Minnesota.

Q. It is true, also, is it not, that there were a great many things that entered into the cost of the road in other places, that did not enter at all into the cost of the road in Minnesota?

A. Yes, sir.

Q. In your testimony about the cost of one mile of main track, which appears on a separate sheet, annexed to the summary on the first page, you had reference to the construction of an average mile of the entire system?

A. Yes, sir.

Q. And that would not be a definite or accurate guide with reference to the cost of construction in this state?

A. No, sir.

Q. For instance, all the steel that enters into the construction of your track is received either at St. Paul, Minneapolis or Duluth?

A. Yes, sir.

Q. And the average haul of that material would be very much less in Minnesota?

A. Yes, sir.

Q. The extent of the grading and the cost of excavation is greater, is it not, in the mountainous country of the West than it is here?

A. Yes, sir.

Q. The amount of rock to be moved per mile, when averaged over the entire system, might be entirely unfair with reference to the mileage in Minnesota?

A. Yes, sir.

Q. And the docks and wharves that you referred to are all outside this state, are they not?

A. No, sir.

Q. You have some at Duluth, have you?

A. A great many.

Q. And Superior?

A. A great many.

Q. You have also some on the Pacific coast?

A. Yes, sir.

Q. Have you got an estimate of the wharves and docks in Minnesota?

A. Yes, sir.

Q. Separate from this?

A. Not in this testimony, no sir.

Q. You have that with you, you say?

A. Yes, sir.

Q. Would you kindly let us see it?

(Witness produces paper which was marked for identification, "Complainant's Exhibit 3.)

Q. Calling your attention to the estimated cost of reproducing the Northern Pacific Railway system in Minnesota, you have included in your written estimate before me, as item 1, land for right-of-way, yards, and terminals,

A. Yes, sir.

Q. Are you able to testify, from any personal knowledge, as to the value of that item?

A. No, sir, that was gotten entirely from the right-of-way agent.

Q. The same rule would apply to that with reference to Minnesota as you applied to it with reference to the entire system?

A. Yes, sir.

Q. You are not informed on the question?

Mr. HOW: I shall put the right-of-way agent on the stand for the purpose of establishing that.

Q. Now, will you kindly state just how you made this estimate, embodying items 2 to 29, which seem to be all included in one general aggregate?

A. In the second column, headed April 30, 1908?

Q. Yes. In the second column you intend to include, do

you, the gross sum of the various items constituting column 1?

A. Yes, sir; plus what has been done since.

Q. That twenty per cent?

A. No, sir. That first column is estimated cost as of December 31st, 1906, the second column is the cost brought up to date, to April 30th.

Q. By whom was this estimate made as contained in column 1?

A. Why, the estimate was made by a great many different parties; that is to say, the quantities were gotten up by many different parties, most of them in my office.

Q. They were embodied in your summary here upon information furnished you by the various parties who made them?

A. Do you mean the second column or the first?

Q. I am speaking of these items in column 1, against which you have written the sum of $64,049,524.14.

A. It is including items from 2 to 29, yes. That portion on the first column was made up from quantities worked out in the general offices, most of them in my office.

Q. But not worked out by you personally?

A. No, sir.

Q. And have you any personal knowledge with reference to their accuracy except from the fact that they were furnished to you by employes of the road?

A. Mostly by my own employes, yes sir, from my own records, and my own clerks.

Q. They were employes of the road, I suppose. They are not your employes, although under your supervision?

A. Well, I am in the same office, the same department. Of course they are not my own personal employes. I have to get all my quantities in the other estimates the same way, I couldn't do it personally, take off every item, I have to apportion this out to different clerks.

Q. Have you any knowledge of the method employed by

them in getting at the information?

A. Yes, sir.

Q. How do you know?

A. Why, I tell them the method to pursue.

Q. And assume that they follow your instructions?

A. Yes, sir.

Q. But were any of the investigations made, or the actual work of ascertaining these figures done, under your personal supervision?

A. No, sir; except—

Q. Simply done under your instructions?

A. Except the items of grading, clearing and grubbing. That is entirely my own, and the estimated cost of it. But the others, nearly all the others, I went through those things in detail, and checked up the quantities and the prices. And they were very reasonable.

Q. Now, then, does that item of grading, clearing and grubbing, indicate what that work actually cost, or your estimate of what it is worth?

A. My estimate of what it will cost to reproduce it.

Q. In making that estimate of what it will cost to reproduce it, did you take into consideration what it would cost to actually do it in the first place?

A. No, sir, I took into consideration the difficulties that they encountered in the first place.

Q. Well, do you know what those difficulties were?

A. Yes, sir, I have an idea of some of them across the Minnesota swamps and muskegs.

Q. As a matter of fact this item of grading, clearing and grubbing was in the main completed before you were employed by the road?

A. The quantities were, yes, sir. Oh, you mean the construction?

Q. The work itself, yes.

A. Well, a large portion of it was; some of it was not.

Q. How did you get at the amount?

A. From profiles and from our records. Of course, a good deal of this I have personal knowledge of.

Mr. HOW: Do you mean the amount that is put down there, or the quantities?

WITNESS: The quantities. I had charge of the construction of the new portion of it in Minnesota.

Q. That is, on the branch lines?

A. Yes, and on the main line. Not of the original construction, but of the reconstruction and second track and the line from here to Sauk Rapids, including the terminals at Minneapolis, and the line from Little Falls to Staples, and the second track from Staples to Fargo.

Q. Where are those tunnels located, item 4?

A. St. Paul.

Q. Altogether in St. Paul?

A. Yes, sir.

Q. And item 5, cross-ties and switch-ties, is an estimate pure and simple?

A. Yes, sir.

Q. There has been no real work of inventorying that road so as to ascertain their number or condition?

A. Well, the items of ballast and track-fastenings and switches and frogs and stock-yards and fences, are taken directly from the superintendent's record, the quantities furnished by the superintendent, their prices applied, and checked in our office.

Q. These miscellaneous buildings, that item includes all the depots and country stations?

A. No, sir, that comes under the head of Station Buildings.

Mr HOW: What are those "miscellaneous buildings," item 18?

A. "Miscellaneous buildings" includes out-houses and tool-houses and section-houses.

Q. You have the evidence of the actual cost of those things, have you?

A. Yes, sir.

Q. And the "General repairs Shops," item 20, shops located in St. Paul, are they?

A. Some of them are; some at Gladstone, some at Como; mostly at Como.

Q. Now getting down to the question of locomotives, how do you ascertain the number of locomotives employed in this state?

A. Take the number assigned to the state of Minnesota.

Q. Assigned in what way?

A. Assigned by the motive-power department for the purpose of operation in Minnesota.

Q. Well, are not these locomotives used in interstate business as well as in local Minnesota business?

A. Sometimes.

Q. Locomotives were assigned to the divisions, were they not?

A. Yes, sir.

Q. Not to the state?

A. Yes, sir.

Q. Divisions are not established by state lines?

A. No, sir, not necessarily.

Q. How did you get at the divisions or process of proportioning by which you get these exact figures?

A. Well, the only way that we can get those exact figures is to take the portion that is assigned to the divisions in Minnesota.

Q. And the divisions that are partly in Minnesota and partly outside of the state?

A. Yes, sir. You can't do it any other way. You can't

get an accurate estimate of the number of engines as a whole in Minnesota unless you take the number of miles run by each particular class of engine and divide by the number of miles run in Minnesota.

Q. What method did you use?

A. Well, I used the method of assignment.

Q. That all locomotives that were assigned to divisions any part of which was in Minnesota you charged to Minnesota, did you?

A. Except perhaps for the Dakota division. Now, the Dakota division is in Minnesota, part of it, but no engines assigned to that division were included here.

Q. Well, what are the divisions in Minnesota?

A. The St. Paul division, the Minnesota division and portions of the Lake Superior division.

Q. When you come to locomotives used in the Superior division, you make an estimate of the proportion used in Minnesota, do you, of those engines?

A. No, sir; I take the number of engines assigned to the Lake Superior division in Minnesota.

Q. And charge it altogether to Minnesota?

A. Well, except for that portion of Oldtown east, there is a certain class of power used between Oldtown and Ashland.

The MASTER: Are these Minnesota divisions all in Minnesota?

WITNESS: No, sir.

The MASTER: What do they embrace? You spoke of three divisions.

WITNESS: The Lake Superior division is partly in Minnesota and partly in Wisconsin, 68 miles main line of it in Wisconsin.

Mr. HOW: Those colors on the map Ex. 1 show the different divisions. They have no significance any more than the

color of an exhibit has on a map, except to show that there are different divisions.

The MASTER: I was inquiring for the purpose of ascertaining what portions of these divisions were in Minnesota. He spoke of some Dakota division that extended into Minnesota.

Q. Perhaps you had better take the map and state definitely what the boundaries are of the divisions that are affected by the use of the equipment in Minnesota.

A. Everything colored yellow.

Mr. O'BRIEN: Can't you give us just a description of the divisions?

WITNESS: The Lake Superior division starts at Ashland and runs through to Staples. Another district of the same division comprises the old St. Paul and Duluth line.

Mr. O'BRIEN: What is the total mileage in that division?

WITNESS: I would have to give it to you by branches; I couldn't give it to you in any other way except by detail.

Mr. O'BRIEN: You can figure it out.

WITNESS: I can furnish it to you.

Q. You can do it by tomorrow morning?

A. Yes, sir. I can give you the mileage up to June 30, 1907, in Wisconsin and in Minnesota.

Q. Just give it by divisions.

A. If I give it by divisions I will have to go into details. I will have to work that out for you.

Q. Can you give us the mileage in each division, and would it be possible to get the number of engines assigned to each division?

A. Yes, sir.

Q. So that we can understand just how you apportioned this?

A. Yes, sir, I will get it for you.

Q. Your statement will show the number of passenger engines and freight engines and cover the whole question?

A. If you wish it that way, yes, sir.

Q. Yes, including passenger and freight equipment.

A. Well it would be quite a job to get that up; it may take two or three days to do it.

Q. It is quite important for us to know how you apportion your rolling stock to Minnesota.

A. I will get that for you if you give me a little time.

Q. Have it cover these four items: Locomotives, passenger car equipment, freight car equipment and miscellaneous equipment.

Witness makes a note of the request.

Attorney-General YOUNG: Your Honor, we would prefer to continue the cross-examination of Mr. Darling after we get that statement and have an opportunity to somewhat familiarize ourselves with his figures, and we could probably go on with his examination tomorrow if he would be ready, or day after, whichever time would suit best.

WITNESS: I would rather have it tomorrow.

Mr. HOW: Can you get that statement up?

WITNESS: I will do the best I can with it.

Mr. HOW: Can't you get that done to-night?

WITNESS: Perhaps so.

An adjournment was here taken until June 5th at 2 P. M.

At 2 P. M., June 5, the hearing proceeded.

WILLIAM L. DARLING,

re-called for further cross-examination, testified.

Mr. O'BRIEN: We desire to amplify somewhat the objection that was made yesterday to Complainant's Exhibit 2, and the testimony with reference to it. We object to any testimony as to the value of the road, or the cost of the road, outside of the state of Minnesota; and desire at this time to state

our claim, that the sufficiency of the rates under consideration must be determined with reference to the traffic in the state of Minnesota, that is, the intrastate traffic in the state of Minnesota and the value of the property used in that traffic, and that that is the sole rule which must govern the Court in determining whether or not the rates under consideration are sufficient.

The MASTER: You speak of the property used in Minnesota for local traffic. Of course a large part of it is used as well for interstate traffic, and of course there comes in another rather difficult problem. I didn't know whether you wanted to limit that statement in any way.

Mr. DURMENT: Well, I suppose, Mr. O'Brien, without conceding what the rule is, the point of the objection is that the question of the sufficiency of these rates, as to whether confiscatory or not, is to be determined entirely with reference to Minnesota and the property and traffic within the lines of Minnesota. In this matter it would be the lines in it, as that is all he testifies to.

Mr. O'BRIEN: Well, of course, what your Honor said is true, but that does not change the rule as we claim it to be, that only that portion of the property which is jointly used, which is properly chargeable to the business of Minnesota, can be considered.

CROSS-EXAMINATION (Resumed).

By Mr. O'BRIEN:

Q. Mr. Darling, I call your attention to Complainant's Exhibit 2. The first column is marked "Estimated cost as of June 30, 1906." When were those figures prepared?

A. They were prepared, or rather they were based on an estimate, made two years ago, for the Spokane rate case, and they have since been changed in a few items, on account of obtaining better information.

Q. Well, then, column 1 is an estimate made by you for

use in the Spokane rate case, subsequently revised?

A. Yes, sir.

Q. Can you call attention to the items which have been revised?

A. Yes, sir. First, engineering; second,—

Q. You are now referring to page 1 of Complainant's Exhibit 2—

A. Yes, sir.

Q.—and item 1, Engineering?

A. Yes, sir.

Q. What was the revision in that item?

A. The revision consisted of including in this estimate the right-of-way and station grounds, and real estate; also including three per cent on equipment, which was not originally included.

Q. In the engineering expenses?

A. Yes, sir.

Q. So that item was increased?

A. Yes, sir.

Q. Can you tell, in dollars and cents, how much it was increased?

A. I think so. The former estimate for engineering was $6,004,673.

Q. Item No. 2?

A. That is identical.

Q. Item No. 3?

A. Item No. 3 has been slightly increased.

Q. By how much?

A. I can't say exactly without figuring it out, but something like two or three hundred thousand dollars.

Q. Now, if you will go on.

A. Items 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38,

39, 40, 41, 42, 43, and 44 are the same. Item 45, or the item of contingencies, has been changed.

Q. What was the change there?

A. It consisted of adding ten per cent to everything included above. The next item, Interest, the same per cent was used, but on a different total. The total would be the items above. The next item, "Lines in Manitoba," is the same. The next item, "Value of Duluth Union Depot" is changed entirely; because in the first estimate we used the value of the bonds and stock. In this case we used the cost of reproduction. The Minnesota Transfer Railway one-tenth interest, has been added, because at the time the Spokane estimate was made it was distinctly specified that the Transfer Railway was not included. Since then, there has been an estimate made on the cost of reproduction, and this estimate is one-tenth interest of the estimate returned by the president of the Transfer Company to the Railroad & Warehouse Commission. The next item, "Supplies on hand" is identical with the former.

Q. Now, will you please tell us upon what amount the engineering expenses were estimated?

A. Upon all items, 1 to 44 inclusive; that is, on a total sum of $361,860,529.

Q. What do you call item 44?

A. Well, grade revision and joint work at Seattle.

Q. Well, do you combine those items?

A. Yes, in calling it "44." You might call it 44 and 45. These numbers refer to the interstate commission's classification, and they have no classification for the last two items.

Q. Well, then, you mean that it includes from No. 1 to what would be 45, inclusive?

A. Yes, sir.

Q. If the numbers were continuous?

A. Yes, sir.

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Q. This estimate of the cost of engineering includes three per cent on the total value of all of the real estate of the Company, does it not?

A. Yes, sir.

Q. And that includes real estate used for railroad purposes, and all other real estate?

A. Railroad purposes entirely; that is, it does not include coal lands, anything of that kind.

Q. Does it include any real estate except the real estate used for railroad purposes?

A. Either used or purchased for railroad purposes.

Q. Including offices and terminals and yards?

A. Yes, sir.

Q. Does it include any real estate which is owned by the Company intended for railroad purposes, but which is not yet used?

A. Yes, sir.

Q. How much?

A. I couldn't say as to that; there is considerable.

Mr. How: I shall produce a witness who can say about the real estate.

Q. Now, in this estimate you have included three per cent upon the one-tenth interest of the Northern Pacific road in the Minnesota Transfer?

A. I think not.

Q. I understand you to say that items 2 and 3 were not prepared by you or under your direction?

A. No, sir.

Q. So you know nothing as to their correctness?

A. No, sir.

Q. Item No. 5, tunnels; those tunnels are located where?

A. Some of them in St. Paul and others in Montana and Washington.

Q. Does Complainant's Exhibit 2 contain a detail as to the tunnels?

A. It contains the details as to the prices used but not the quantities.

Q. It contains no details as to the quantities?

A. No, sir.

Q. Where are the tunnels in Minnesota located?

A. In St. Paul.

Q. And what is their extent?

A. There is a double-track tunnel, two double-track tunnels, in Westminster street; there is a double and single-track tunnel on the St. Paul and Duluth; then there is one other tunnel in St. Paul, a small one.

Mr. HOW: The St. Paul and Duluth is merely one of the divisions of the Northern Pacific?

WITNESS: Yes, sir.

Mr. HOW: Owned by the Northern Pacific?

WITNESS: Yes, sir.

Q. Does Exhibit No. 2 contain any details as to the tunnels in Minnesota?

A. Not except as to the prices. Those I can furnish at any time.

Q. Does Exhibit No. 3 contain any details?

A. No, sir; the only details for that statement is in the system estimate and that is merely for prices.

Q. I notice that the total cost of reproducing all of the tunnels upon the road as of April 30, 1908, according to Exhibit No. 2 would be $4,638,637.

A. Yes, sir.

Q. And the total cost of reproducing all of the tunnels in Minnesota, as shown by Exhibit No. 3, would be $358,363?

A. Yes, sir.

Q. Will you tell us what is included in the amount of $358,363, the cost of reconstructing Minnesota tunnels as

shown by Exhibit 3?

A. There are no details on Exhibit 3 of the tunnels.

Q. There are none?

A. No, sir; the only details I have of the tunnels are included on Exhibit 2.

Q. Can you tell at this time what items went to make up the sum of $358,363. the cost of reproducing the tunnels in Minnesota?

A. Well, that would be the cost of boring the tunnels, the cost of extra excavation, the cost of masonry, the cost of foundation work, the engineering, and all other items that go to make up the cost of the tunnel.

Q. Have you any such details?

A. Yes, sir.

Q. Where?

A. In the office.

Q. Will you produce them?

A. Yes, sir

Q. When?

A. This afternoon, if you need them, or tomorrow morning.

Q. All right.

A. I would rather wait until tomorrow morning if I can. I have them there.

Q. In arriving at the values of the tunnels upon the entire system, was the exact character of each tunnel taken into consideration?

A. Well, no, you can't do that, because it is impossible to tell the character of a tunnel after it is lined, unless you saw it constructed.

Q. Was each tunnel upon the system separately estimated?

A. No, sir; the tunnels were divided into classes; tunnels from zero up to 700 feet in one class, from 700 to 1200 feet in

length in a second class, from 1200 feet up to 4000 feet in a third class, and tunnels approximately ten thousand feet in length in a fourth class.

Q. Was that system pursued with reference to Minnesota tunnels?

A. No, sir.

Q. Were they estimated separately?

A. Yes, sir.

Q. So that the average cost was not taken into consideration in determining the cost of the Minnesota tunnels?

A. No, sir. I would like to say, however, that we applied the average costs to the Minnesota tunnels, and in an estimate of $358,363 there was only four hundred dollars difference in the estimate.

Q. Which way?

A. I think Minnesota shows less here. I would like to say, in tunnels it is almost impracticable to make a complete estimate. The estimate is always made for a tunnel without running against contingencies, but there is generally a lot of contingencies in a tunnel that would have to be covered in a contingency estimate. The estimate we make is for a tunnel that you find under ordinary conditions, but oftentimes we run against slides and cave-ins, and things of that kind, that we have to provide for in the contingencies, and I have so provided for them.

Q. I call your attention to item No. 4 in exhibit 2, grading. Will you please tell what that includes?

A. That includes clearing and grubbing, grading and all work that is under the interstate commerce distribution that is chargeable to grading.

Q. Well, that is what I asked you to tell us, what it does include.

A. Well, it includes all excavation; and in connection with the road crossings it includes all ditching, sloping of cuts and

embankments; drainage in connection with the grading; all clearing and the grubbing of the stumps and material off the ground, so that contractors can get at the work.

Q. Would it be correct to say that it is constructing the road-bed up to the point where the ballasting and the surfacing commences?

A. No, sir; because there are lots of bridges and trestles and culverts in the road-bed, lots of tunnels in the road-bed, but with those exceptions it would cover all charges except engineering, right-of-way and real estate.

Q. Well, with the exception of tunnels, trestles and bridges, it would be correct to say, then, it covers the cost of preparing the roadbed up to the point that it is ready to receive surfacing and ballasting?

A. Yes, sir, I think so. I would like to say, however, that there would be other charges included in grading—or, not in grading, but under the head of work-train equipment, that would not be included in that.

Q. Are there any other exceptions?

A. There is an item here of grade revision between 1897 and 1901 that a large part of it is chargeable to grading which is not included in item 4. A great portion of the item "joint work in Seattle" is also chargeable to grading and tunnels. And, in addition, there is chargeable to grading a portion of the estimates of "Lines in Manitoba, Duluth Union Depot, St. Paul Union Depot, and Minnesota Transfer."

Q. In the case of the lines in Manitoba, an item of seven millions of dollars, is that intended to include that entire line?

A. Yes, sir.

Q. Well, what you mean to say, then, is that in that total of $7,000,000 for lines in Manitoba is included the cost of grading?

A. Yes, sir.

Q. If we should add that cost to item No. 4, it would be

a duplication, would it not?

A. No, sir.

Q. Unless we deducted it from the total cost of the road, of the line?

A. No, sir. Well, yes, if you used both items.

Q. Yes.

A. Yes, sir.

Q. But if you used the item, "Lines in Manitoba, seven million dollars," that includes the grading on that line?

A. Yes, sir.

Q. That is also true with regard to the Transfer and the Union Depot, is it not?

A. Yes, sir.

Q. Each of those items includes the entire value of the line?

A. Yes, sir.

Q. Now, is that also true of the grade revision, which would be item 44?

A. Yes, sir.

Q. And of joint work in Seattle?

A. Yes, sir.

Q. Now, will you please describe the character of the country traversed by the Northern Pacific upon its main line, having special reference to the character of the earth or country which it traverses?

A. In Wisconsin the excavation is made up, I should judge, about fifty per cent of sandy material, and fifty per cent of red clay. In Minnesota the main line is made up, a portion of the distance, of very heavy red clay construction; then there is about sixty to eighty miles of construction through swamps and sandy knolls between swamps, and some clay construction. From Brainerd west to Staples, there are some swamps, but the knolls are mostly sandy. From Staples west to Detroit, is through a sandy country, up to Richland through a

sandy country; from Richland to Glyndon, very heavy clay; there is some wet clay and some blue clay, and some sandy clay. From Glyndon—

Q. Now, let us stop there with Minnesota. Have you reached the boundary yet?

A. No, sir. Instead of Glyndon I should have said Stockwood, but from Stockwood west to the Red river it is through the Red river bottom, and with heavy construction; it is very hard material to handle; with light construction it is very easy.

Q. Then you reach Dakota?

A. Yes, sir.

Q. Now, go on and describe that.

A. In Dakota, from Fargo west for the first fifty miles, it is very easy construction, except that the quantities are large; it is Red river soil, loam and some gumbo.

Q. Is it of the same character as the soil east of the Red river?

A. No, sir.

Q. What is the difference in the immediate vicinity?

A. Well, it is the same character as that immediately east of the Red river for the first fifteen miles, but east of that particular place, that is, 15 miles east of the Red river, the character of the soil is very different from that west of the Red river. From a point about fifty miles west of Fargo, through to Jamestown, it is considerably heavier construction, the material is heavier, there is more clay in it, and although not a blue clay it is a very heavy, sandy clay, and, in the vicinity of Valley City, there are a great many boulders in it. From Jamestown west, the construction is moderately heavy and the material moderate, mostly of a sandy-clay nature. That same condition prevails from the Missouri river west to Glendive, except that the work is heavier, and from the Bad Lands and along the streams like the Sweet Brier and Andrews

Creek and Glendive, there is a good deal of construction in the way of requiring blasting of sandstone and soap-stone and the heavy clays. From Glendive west, all along the Yellowstone, wherever the bluffs are not encountered, there is a very easy construction, the easiest I think there is anywhere east of the mountains, but the bluffs are extremely heavy. When the line was located, there was a cut very heavy into the bluffs to avoid the river, they were afraid of the river, and it necessitated afterwards the sloping away of a good many of these bluffs. They were first taken out at about a-quarter-to-one slope; they afterwards had to be sloped materially. A great many of the slopes caved and they had to be taken out and cast into the river. From Livingston, where they leave the river, west to Missoula, the character of the work is rather heavy, through the mountains a great deal of rock work, in the valleys very light construction except from Garrison to Missoula; there in the valleys the construction is light and the material is easy to move, but there are quite a number of changes of the channel, and some gravel that is very hard to move. By that I don't mean it is cement gravel, but material that is much harder to move than in the Yellowstone or in other valleys in Montana. From Missoula west to the Flathead river, at about Arlee, the construction is heavy, going over the Evaro mountain; from where they strike the Flathead river to the mouth of the Flathead, the construction is not so very heavy, compared to what it is over the mountains, but from the mouth of the Flathead river through to Sand Point, the construction has been very heavy. There has been a great deal of bluff work taken down, that it is impossible to estimate or impossible to provide for in an estimate. The earth material that can be moved with scrapers is light, and probably as easy to move as anywhere in Montana, but, during the time of construction, and even now, there is a great deal of underbrush and swampy places. From Sand Point

west to Spokane, the character of the work at the time of construction was very different from that east, because it was heavily timbered, and in the winter the snows were very heavy, making it very expensive work, if done in the spring before the first or middle of June. From Spokane west to the mouth of the Snake river, where the Northern Pacific crosses the Columbia and goes towards Puget Sound, the country is what is known as a "scab" country; that is, it is full of scab-rock, and there is a great deal of rock excavation, the earth material is of a volcanic nature, and it is very light and very easy to move. From Pasco, the crossing of the Columbia, west to Ellensburg it follows the Yakima river. The valley construction is very light but the mountain construction, of which there is some 15 or 20 miles, is very heavy; very heavy volcanic rock. From Ellensburg west over the mountains, through to Tacoma, or from Auburn, is very heavy work, all mountains and mountain work; the timber was very heavy, and is much heavier construction than any portion east, and much more difficult on account of the amount of moisture and precipitation. That merely describes the main line.

Q. Is it true that after you reach a point 50 or 100 miles west of the eastern boundary of North Dakota, the cost of grading on an average for the remainder of the line is much higher than it is east?

A. No, sir, I don't think so, not very much; it may be a trifle higher. I should judge that the average would be not over seven or eight per cent higher. That is, if it averages 33 cents in Minnesota, it should not average over 37 or 38 the rest of the total, including Minnesota.

Q. Then you think the average cost of the entire line would be greater than the cost in Minnesota?

A. Slightly, yes, sir, for grading.

Q. For grading.

A. And for a great many other items, on account of haul.

Q. Now, will you describe the branch lines?

A. There is but one branch line in Wisconsin; that runs up to Washburn; that is rather light construction, through sandy soil, but in the timber. In Minnesota, the branch to Cloquet was very, very difficult of construction. The quantities were not so great but it was very difficult to grade. That part of the main line from Little Falls to Brainerd was through a sandy country and very light. From St. Paul to Little Falls it was through a sandy country and light. The branch from Little Falls to Morris, some of it, was rather heavy and difficult, but a good deal of it was light; that is, easy construction. From Brainerd north, I think up to Walker, the construction was rather light and through a sandy soil and there was a good deal of brush and timber, but from there north the construction was very difficult, through the heavy clay country and through the swamps. From Winnipeg Junction north, the construction along the present main line of that division was not heavy, but the Red Lake Falls branch was a very difficult branch, most of it. The Fergus Falls branch, that portion in Minnesota, was difficult; some heavy construction and some clay in the vicinity of the Red river, coming down in to the Red river from Fergus Falls, and a good deal of wet construction through the bottoms east of Milner, or rather between Wahpeton and Milner. In North Dakota, the Casselton branch, some of it, was very heavy construction, especially across the Cheyenne river, where they encountered very heavy clay cuts. The Cooperstown branch was a very easy one. The Fargo & Southwestern was not particularly hard, except across the Red river, where they encountered the Red river clay again. The James river valley was light construction. The Bowdoin extension, some of it was rather heavy, running as high as 25,000 yards per mile. The extension from Edgeley northwest was through a sandy clay country, and the construction moderate. Those are all

the branches I think of in North Dakota except the Devils Lake branch, which was moderate construction. It follows the general drainage of the Jim River valley to Leeds, where it crosses the Great Northern, and is generally on the bench lands, and those bench lands are sandy clay, interspersed with boulders.

Mr. DURMENT: Heavy or light?

WITNESS: That is moderate construction. The Turtle Lake branch is moderately heavy construction; it is through a sandy clay country, but the prairies have heavier rolls, and the construction runs more yards to the mile and is more difficult. In Montana, the Red Lodge branch, although light in yardage is rather difficult construction, because it is through a bouldery country, that is, soil intermixed with boulders; but the branch that leads from the Red Lodge branch up towards Bridger and beyond towards Bear Creek, was very light construction. The line from Livingston into the Park was moderately heavy. The line from Logan through Butte to Garrison, about thirty miles out of a total of 130, was very heavy, crossing the Rocky Mountains into Butte. The balance of the work was very light. The branches from this line to Pony was heavy. The Whitehall branch to Twin Bridges and beyond was light and through a sandy clay country. The branch from East Helena over the mountains to Boulder and up the Elkhorn, I should judge at least half of it was very heavy work over the mountains, crossing a spur of the main range between Helena and Butte, and that portion from the Boulder river up to Elkhorn City; the balance of the work is light. The Marysville branch was heavy construction. The Rimini branch was light, following Ten Mile valley all the way up. The Phillipsburg branch from Drummond to Phillipsburg was very light construction, following the valley of Flint creek. The soil was light and very easily worked. The Bitter Root branch extending from Missoula south, was light construction

and followed the valley of the Bitter Root, and the material was light and easy to move. The Coeur d'Alene branch, from Missoula to Wallace, for the first seventy miles was moderately heavy construction; the next twenty miles was of about the same nature, as the quantities were light, but the grading was extremely hard to do. From this point west to Wallace, the line was over on each side of the Bitter Root Mountain, and was heavy construction. From Wallace to Mission, it followed along the valleys through to lake Coeur d'Alene, with moderately heavy construction. From Houser Junction to Coeur d'Alene City, in Idaho, the line was along the valley of the Spokane river, and the construction very light. The Palouse branches, from Marshall Junction southwesterly through the Palouse country, were moderately heavy; the soil was very heavy, and of a clayey nature, although not of the blue clay found farther east, but some of the work was difficult and the quantities were heavy. The extension through to Lewiston, down Potlatch creek and the Clearwater river, was moderately heavy as is all of it along the Clearwater river from Lewiston up to Stites; there is a great deal of rock but the quantities were moderate. The rock was of a volcanic nature and the bottoms the valleys, volcanic ash, or rather the wash from the mountains, but it was easy to handle, and the construction light. The Washington Central was through this same volcanic country, the earth moved was very light, but there was a considerable amount of rock in it. The quantities were moderate. The soil was identical with that found everywhere between a line passing north and south through Spokane and the Yakima valley. The branches leading from the line from Cooley City to Adrian, and from the branch of the Central Washington, was heavy construction, a great portion of it being through the volcanic rock, the earth was very light and the same material as generally in that part of the country. The Washington and Columbia river lines from

Pasco southerly and southwesterly are through the same sort of country as the Washington Central, although on the bench lands there was not so much rock encountered, but in climbing up out of the river valley onto the bench lands the work is heavy, and a great deal of rock encountered. From Clallam northerly to the Roslyn mines, the construction is light, but rather difficult. The Green River Northern, extending north from the main line, was of difficult construction, and heavy. The Buckley Loop Line, extending from Buckley to Meeker Junction, and which was originally the old main line, was heavy construction and very difficult. The branches leading off from this Buckley Loop line south towards the mines, were of very difficult construction, not only on account of the material encountered, but also the heavy growth of timber and the dense precipitation,—which is true of all lines west of the Cascade mountains. The north and south line from Tacoma to Seattle is mostly through the valleys of the different rivers that empty into the Puyallup and into the White and Black and Stuck, and follows the valleys the entire distance up to Seattle, but the quantities are very heavy and the grading very difficult if not done at a certain season of the year. From Black River Junction, which is about ten miles south of Seattle, a line extends northerly and east of lake Washington, what is known as the Seattle Belt Line,—to a connection with the main line of the Seattle division at Woodenville Junction, which was a very heavy and difficult line, heavy on account of quantities and difficult on account of the swamps and cement gravel in the bluffs that had to be moved. The country is densely timbered and unless work is done at certain seasons of the year is rendered very difficult on account of precipitation. From Seattle north to the boundary line, at Sumas, the line although not so heavy from quantities to be moved is yet a difficult line to construct on account of being a heavy class of material and in the dense timber, and on ac-

count of a portion of this having to be done during the rainy seasons, as it is impracticable to build one of those lines during the short dry season. The Port Townsend branch, in the southern portion, was a very difficult line to construct on account of the immense amount of bridging; that is west of Hoods Canal; and that portion from Olympia east was not so difficult except on account of the dense growth of timber, as the quantities were not heavy and not so very much rock encountered. The line from Tacoma south to Chehalis, which passes over the dividing ridge between Puget Sound or the Puyallup valley and the Nesqually valley, is a very heavy, gravelly soil, and although construction was light in quantities yet it was rather difficult to move, but the timber is light and there is not very much trouble from precipitation. But from the Nesqually west to Chehalis, the character of the country is somewhat different; although there is some gravelly soil yet there is some of a clayey nature that is very hard to move when it is wet, and there is a heavy growth of timber. From Chehalis south, the line runs over what is known as the Newaukon Hills, between the Chehalis and the Cowlitz rivers. The construction is moderately heavy and rather difficult on account of dense timber. From the Cowlitz river it practically follows the bluff along the Cowlitz to Kalama, where it crosses the Columbia river. Thence construction is heavy and difficult along the rock bluffs. At Kalama the river is crossed on a trestle, and from there to Portland the line follows parallel with the west bank of the Columbia river into Portland or to the mouth of the Willamette; the construction is moderately light. From the mouth of the Willamette to Portland, the construction is also light but is difficult on account of timber and moisture. The lines leading to South Bend and Grays Harbor, on this last named line, were heavy, and the portions over the coast range were very difficult on account of the very dense growth of timber and the amount of

precipitation. The soil is a very dark loam and clay. From Grays Harbor, on the northerly shore of Grays Harbor and thence along the coast to the mouth of Moclips river, the construction was exceedingly hard and moderately heavy. The timber was very difficult to handle. That is all the branches I think of now.

Q. Now, will you please tell us what you did for the purpose of ascertaining the character of the work required to grade the lines of railroad you have mentioned, the amount of material of various kinds in each line, and the cost in preparing to testify in this case?

A. I took the approximate quantities in each particular section and judged what it would cost to move it.

Q. Where did you get the approximate quantity in any one of the sections you have mentioned? Now, first, when you say you did that, are you referring to your preparation for the Spokane rate case?

A. Yes, sir.

Q. This was when?

A. Two years ago.

Q. Now, just tell us, please, what you did.

A. Why, I merely took the quantities in each particular district.

Q. Where did you get those quantities?

A. From our records.

Q. Have you a record of the quantities of material moved on each section of the road?

A. Well, not complete; but in 1898 there was a very complete estimate made for the different sections of the road then owned.

Q. Who made that estimate?

A. That estimate was made in our office.

Q. Were you at that time the chief engineer?

A. No, sir.

Q. Were you in the office?

A. Yes, sir.

Q. Who superintended the making of that estimate?

A. Mr. McHenry.

Q. What was the purpose of the estimate?

A. I think it was in connection with the Dakota rate case. I am not sure about that though.

Q. Did it include all of the road constructed at that time?

A. All of the road owned at that time, yes, sir.

Q. Is that what you refer to as the record of the office?

A. Why, that is one of the records.

Q. Did you use that?

A. Yes, sir.

Q. You accepted that statement as to quantities?

A. No, sir.

Q. Well, what did you do?

A. That record was made from our profiles and from the records in our office, and based on the manner in which the road had been constructed at that time. Since that time, the standard has been materially changed, and to that I added (that is in this Spokane rate case, not in this) I added a certain percentage for the shrinkage of the embankments and for the enlargement of cuts, which was twenty per cent.

Q. That is what you testified to yesterday—twenty per cent?

A. Yes, sir.

Q. It is your judgment that that is an accurate addition, is it?

A. Just as accurate as anybody can possibly get it with the very best of judgment unless you go out and cross-section the railroad.

Q. You could have determined exactly?

A. Determined what exactly?

Q. The amount of addition; could you not?

A. I could have been more accurate than I have been by expending more time and labor.

Q. How much time and labor have you spent to ascertain the percentage which you should add to Mr. McHenry's estimate?

A. Well, probably an hour; simply a matter of judgment that I knew that the section had been increased and I knew that it had been increased from 12 and 14 feet, to 16 and 20 feet. It is a mere matter of calculation how much I should add.

Q. Has that increase been made over the entire line?

A. No, sir, not in Minnesota. It was made in this exhibit No. 2, but not in Minnesota.

Q. But that increase was added to the entire line in Exhibit No. 2?

A. Yes, sir.

Q. That included the line in Minnesota?

A. Yes, sir.

Q. Well, which is correct as to Minnesota, No. 2 or No. 3?

A. Both.

Q. How can that be?

A. Because they are both on a different basis. Now, No. 3 is taken from details which we have in the office; it is gone into much more thoroughly in the matter of detail than our previous estimate was. On Exhibit No. 3 they have had very much more time and the details have been very much more worked out and they have been checked with the work of the Minnesota State Commission and after they were checked there was other work done on them and they were modified, so that they are more accurate, perhaps, than the estimate which covers the whole line.

Q. Is it not true that your original report to the Minnesota Commission covering the property in Minnesota was more accurate than your estimate on the entire line?

A. I don't think so, although it was gone into very much more in detail.

Q. So far as the amount of care and attention devoted to it, it ought to have been more accurate, ought it not?

A. Yes, sir, but sometimes you can lose yourself in details, go so far into the details that you lose the whole thing.

Q. But your judgment is that it was not more accurate, then, because of the extra care that was taken?

A. I wouldn't want to swear to that. My judgment is that it would not be any more accurate.

Q. Now, it is true, is it not, that the report furnished by you to the Railroad and Warehouse Commission was not accurate?

A. Why, it was modified somewhat.

Q. Is it not true that that report was modified as to the quantity of material required to be moved between Bald Eagle lake and West Duluth, upon what was known as Station No. 2, to the extent of nearly one million yards?

A. I can't say as to that. I know there was a very considerable difference, and it was modified. I wouldn't say just how much that was, because I didn't see the estimate.

Q. It was modified when Mr. Morgan, the engineer of the Railroad and Warehouse Commission, called your attention to it?

A. I think it was, yes, sir.

Q. And isn't that also true with regard to the number of yards of material required to be moved in the construction of the line from Brainerd to Duluth, known as Section No. 10 in the Minnesota report?

A. Yes, sir, there was. I would like to say, however, that that estimate was made entirely in a different way and by different people from what this original estimate was made, and this estimate was prepared but never was submitted, so far as I know personally.

Q. Then the estimate No. 2, which you have now introduced, has never been analyzed or criticized?

A. It has been very severely criticized, the original estimate was.

Q. I thought you said it never was submitted?

A. No. 2 was originally submitted to the Interstate Commerce Commission in Chicago, and that was criticized in Portland.

Q. What statement are you referring to when you say that it was never submitted?

A. The statement I have reference to is the former part of Exhibit No. 3, which you say was criticized by the Minnesota State Commission; now that is an exhibit that I don't know anything about.

Q. Mr. Darling, Ex. No. 2, with the exceptions that you have mentioned, was prepared under your direction, was it not?

A. Yes, sir.

Q. And do you present that as your judgment?

A. Yes, sir.

Q. Now, isn't that true of Ex. No. 3?

A. Yes, sir.

Q. Well, what was it that you referred to as saying that you had nothing to do with the matter?

A. The exhibit which you said had been submitted to the Minnesota State Warehouse Commission and modified.

Q. By that you mean the report?

A. I don't know whether it was a report or exhibit or what it was; it was something you mentioned.

Q. I show you "Defendant's Ex. A—part 1," "Deft's Ex. A, part 2,, and Deft's Ex. A, part 3" and ask you if that is the report made by the Northern Pacific Railway Company to the Railroad and Warehouse Commission of this state with reference to its property in Minnesota.

A. I don't know, sir; I have never seen it. Do you want me to look at it?

Q. Yes, sir.

A. I don't know anything about the report.

Q. Didn't you help any on it?

A. No, sir, never had anything to do with this report except to turn my office force over to them to do the work, until I was asked to testify in this case; then I took the report and went through it and have checked it up in detail throughout; but before this went to the Minnesota Warehouse Commission I never saw it.

Q. Have you seen it since?

A. I have got one, I would have to compare it to see, I have a lot of details and I have a condensed one.

Q. The report, then, with reference to the value of the property of the Northern Pacific Railway Company in Minnesota, which was made to the Railway and Warehouse Commission of this state, was never submitted to you until after it was filed with the Commission?

A. No, sir. At one time I did talk the matter over with reference to a general valuation, but never looked at the thing in detail, and I don't know whether the thing I talked over was ever submitted to the Commission; and I have talked to my men in the office about prices and to the men that were making up that report about prices, but as far as checking the report, I never had anything to do with it and never saw it when it was submitted.

Q. Have you examined it since it was submitted?

A. Yes, sir.

Q. Have you checked the estimates you now present in Ex. No. 3 with the report submitted?

A. With some exceptions which I think I have noted, such as right-of-way and equipment and telegraph lines and Min-

nesota Transfer and Minnesota International Railway. Those items I excepted.

Q. Is it not true that the quantities of material required to be moved in Minnesota to reconstruct the lines in Minnesota, as contained in Ex. 3, have been taken by you from the report filed with the Commission as amended by suggestions received from Mr. Morgan or the Railroad and Warehouse Commission?

A. Well, I have accepted the quantities. You have reference to the grading?

Q. Yes, I said materials moved.

A. Yes, sir. No, it is not a fact, stated in that way.

Q. Well, state it your own way.

A. I have accepted the total quantities of material moved, but not the classification. I have accepted those because I have gone over the reports that were made by our men and also by Mr. Morgan's men and which have since been checked and modified, and accepted those figures as to quantities in Minnesota.

Q. I do not understand from your answer whether you have made an independent estimate, yourself, as to the quantities of materials required to be moved in Minnesota to reconstruct the lines, or whether you have accepted the estimate of those amounts as contained in the report to the Commission as modified by information received from Mr. Morgan.

A. I certainly have taken all those records which we have had in connection with these quantities, not only Mr. Morgan's letters, but whatever suggestions he has made, or whatever work our men have done, and I have gone all through those and accepted those quantities as being approximately correct, but not correct in detail.

Q. What have you used beyond the report filed with the Commission and the additional information furnished by Mr. Morgan, the engineer of the Commission?

A. Only my own judgment of what that material should

run per mile over the different districts.

Q. Then when you speak of records, you have used no records except those reports?

A. Well, personally?

Q. Yes.

A. No, sir.

Q. Then you have accepted the quantities as contained in that report and as corrected by Mr. Morgan subject to your general knowledge of the situation?

A. I have accepted the total quantity, but not the quantities.

The MASTER: It is the classification you refer to?

WITNESS: Yes, sir. The total yardage in my estimate is identical with that of which I have a copy which was supposed to have been submitted to the Commission.

Q. In making up Ex. 3, then, you re-classify the total yardage as reported to the Commission?

A. Yes, sir.

Q. In doing that, what did you rely upon?

A. My own judgment of the material to be moved.

Q. Without going upon the ground for that purpose?

A. No, sir; I know the ground pretty thoroughly without going upon it.

Q. Simply from your general knowledge of the situation?

A. Yes, sir.

Q. Now, can you tell us what changes you made?

A. Yes, sir; I accepted the solid rock classification as a fact. The earth and loose rock I did not accept, because I checked over with the men who were making up this estimate originally a list of prices for the different districts for moving what would be known as earth under our ordinary specifications, but when that estimate was returned they returned nearly all the quantities in that construction as earth, whereas a great portion of them would be classified, under our pres-

ent classifications, as hard-pan or cement gravel—not cement gravel, but hard-pan or loose rock or indurated clay, which would practically be hard-pan. Now it was impracticable, or rather, I considered it impracticable, to divide that into hard-pan, loose rock and earth, but it is very much easier to set a price on the total outside of rock. The material in Minnesota can be classed under one head, as material outside of solid rock, and a price for moving that can be estimated upon much easier than you can when you attempt to divide it into classifications.

The MASTER: Is that because of its similarity?

WITNESS: Yes, sir, because of its similarity in different districts. One district has one kind or class and another another class; another district will have something else; for instance, the material in the vicinity of Duluth is red clay, clear up as far as Carlton; then from Carlton west you run across a different class of material; then from Minneapolis north you run across a different class of material, very easy to move; and we have got to take that whole thing and consider it as a whole, exactly the same as a contractor if he were going over that with a profile in his hand, he would go over and estimate what he could do that work for; and that is exactly the way I have had to go to work and make an estimate on what it would cost to move that material, and I have had to include not only what the contractor would estimate as his charges for moving that material, but also the charges which the railway company have to pay that include transportation and extra bills and other work for which the contractor does not have a unit price, but which we would have to include in this estimate if we did the work.

Q. Are you able to tell us at this time the number of cubic yards of solid rock originally reported to the Commission?

A. I don't know anything about that original report, I have never seen it.

Q. Well, you have seen it since it was made, have you not?

A. I have seen this last report, but you spake of an original report that was modified, now I have never seen that.

Q. You never saw the report that was made to the Commission?

A. And modified? No, sir.

Q. I am speaking now of the report that was made to the Commission by the Company; have you ever seen that?

A. The last report? I have a copy of what is supposed to be the original report, although I have never seen the original report.

Q. You have got a copy made in your office?

A. Yes, sir.

Q. But you never saw that until after it had been submitted?

A. No, sir.

Q. But you have had access to it since that time?

A. Yes, sir.

Q. Now, you changed the classification?

A. Yes, sir.

Q. That is, the classification of the material as given in Ex. 3—

A. Yes, sir.

Q. —is not the same as the classification contained in that report?

A. No, sir.

Q. Now, I want to know how much solid rock was given in the original report.

A. You are referring now to the report which the Commerce Commission now has?

Q. Yes.

A. I think it is 182,000 yards. It is in the details here.

Q. I am referring to the original report.

A. The original report?

Q. Yes, as it was originally reported.

A. Why, I have accepted the same thing in this estimate. In my Ex. No. 3 I have accepted identically the same yards that were included in the estimate that has been submitted to the Commission with reference to solid rock alone.

Q. We don't understand each other yet. You have accepted, in Ex. 3, the number of yards of solid rock as contained in the corrected report to the Commission?

A. Yes, sir.

Q. I want you to give me the amount of solid rock reported originally to the Commission.

A. I don't know anything about it, I never saw it.

Q. Did you not see the report, or a copy of the report, after it had been submitted?

A. No, sir.

Q. Are you able to say whether or not the entire correction in the amount of solid rock was on the line between St. Paul and Duluth?

A. I couldn't say, no, sir.

Q. Are you prepared to say whether that entire correction was made at the suggestion of Mr. Morgan?

A. I don't know anything about it.

Q. You accepted it as you found it?

A. No, no; I accepted this after talking with the man who made it, and it is supposed to be an estimate of the quantities of solid rock in that district.

Q. Is it not true that the solid rock originally reported to the Commission on the line between Bald Eagle and West Duluth was 182,203 cubic yards?

A. I couldn't tell you.

Q. And that Mr. Morgan, under date of August 10, 1907, called the attention of your Company to the fact that the number of yards of solid rock upon that line should be 89,705 cubic yards?

A. Possibly.

Q. And that the only correction made in the classification was that correction made as a result of the investigation of Mr. Morgan?

A. Possibly it was. The items were so small that if I had known that and it had agreed with Mr. Morgan, I would have accepted it in a minute because the change was so very slight.

Q. The distance from Bald Eagle to West Duluth is about 130 miles, is it not?

A. Yes sir, about.

Q. Do you consider a discrepancy in the number of yards of material in that distance, amounting to nearly one million of yards, and a difference of 70,000 yards of material in classification beween earth and solid rock, so slight as to be negligible?

A. It depends entirely on how that is submitted. If an estimate is submitted and not edited, there is no chance to check it up. Now, in the first place, I would have to explain just how that difference occurred. These estimates were taken from the profile, the embankments were taken from the profile and the excavations were taken from the profile. The man that made these items added these two together, as nearly as I can find out, (that is the way I have had it explained to me) and they were submitted as a total estimate of the total number of cubic yards in that line, whereas, as a matter of fact, the material from the excavation is hauled into the embankments and instead of having both sums they should have only the one. Now, those were not edited, or rather, they were not checked up, and were submitted without a check.

Q. That, really, amounts to a duplication?

A. Of the yardage, yes, sir.

Q. Of the yardage?.

A. Yes, sir.

Q. Are you able to say whether that has occurred in the

yardage given in Ex. 2?.

A. No, sir, it has not.

Adjourned until Saturday, June 6th, at 10 o'clock.

Saturday, June 6, 1908, the hearing of the above entitled cause proceeded at 10 A. M.

WILLIAM L. DARLING,

Recalled for further cross-examination, testified.

By MR. O'BRIEN:

Q. Calling your attention to Ex. No. 2, and turning to the page of that exhibit maked "Details of Grading", I notice the item "Earth, 116,412,694 yards, 28 cents." That 28 cents is what?

A. Is the cost to the Company for moving that class of material; and it is made up of the cost that we have to pay to the contractor, plus transportation, extra bills and other items that go to make up the real cost to the railroad company. That is detailed on another page.

Q. That 28 cents per yard, then, is not the price that would be paid to the contractor?

A. No, sir.

Q. But is the price to the Railroad Company, including every expense?

A. Yes, sir.

Q. And that is also true with regard to the other prices which appear in "Details of Grading"?

A. Yes, sir.

Q. On this page?

A. Yes, sir.

Q. Are these amounts, given on this page which I have

mentioned, marked "Details of Grading" intended to be the total number of yards of material of various kinds which would be required to be moved in order to reconstruct the entire line?

A. No, sir, because there are other items on page 1 of Schedule 2 that go to make up the total cost of grading, such as grade revisions, joint work in Seattle, lines in Manitoba, Duluth union depot, St. Paul union depot, and Minnesota Transfer.

Q. With those exceptions, do they include the total amount of materials?

A. Yes, sir, all that is properly chargeable to grading. There is a lot of grading and different work that is charged directly to bridges and construction that is not included.

Q. Yes, I understand that. I am speaking of the grading.

Mr. How: Of what date are you speaking, Mr. Darling?

WITNESS: Both of June 30, 1906, and April 30, 1908. But those quantities refer to the estimate of April 30, 1908.

Mr How: They do?

WITNESS: Yes, sir.

The MASTER: On this page Details of Grading,—it refers to that?

WITNESS: Yes, sir.

The MASTER: Well, do I understand that all of these tables attached to this first sheet have reference to April 30, 1908, that is, the second column?

WITNESS: Yes, sir. I will have to modify that by saying including my other testimony that I have added to these the charges made by the auditor since.

Q. I don't understand that.

A. Now, for instance, that item under the head of "Grading No. 4", showing on June 30, 1906, an estimate of $77,468,890, is the total of the grading under the head of Details of

Grading, which is shown more specifically on still another page. Here are the details.

Q. What page are you looking at?

A. It is my fifth page.

Q. What is it headed?

A. It is not headed, but it is Clearings, it is the details of that item.

Q. I don't think you fully understand the first, or practically the first question. You said that the price of 28 cents appearing in Details of Grading for the moving of earth. covered the cost to the Company?

A. Yes, sir.

Q. The entire cost to the Company?

A. Yes, sir.

Q. Well, does that include this engineering estimate?

A. Oh, no; no; engineering would be three per cent on top of that.

Q. Yes.

A. Yes, sir, and then there are contingencies on top of that.

Q. In your other details here you don't include that?

A. No, sir; engineering is not chargeable to grading; so it is separated.

Q. But you add three per cent for engineering?

A. Yes, sir.

Q. To the cost of grading?

A. Yes, sir.

Q. So that the estimate which you have allowed for grading and the estimate which you have allowed for contingencies is in addition?

A. Yes, sir.

Q. Now, continuing to look at details of grading on page 3, that price of 28 cents is intended to be the average price?

A. The average price for earth, yes, sir.

Q. The average price for earth?

A. For what I have classified as earth.

Q. For what you have classified as earth—

A. Yes, sir.

Q. —over the entire line?

A. Yes, sir.

Q. Material is ordinarily divided into four classifications, is it not?

A. Why, generally, yes sir; sometimes it is three; sometimes two, sometimes one, depending on circumstances and conditions.

Q. But ordinarily?

A. Yes, sir.

Q. There are four general classifications: earth, hard-pan, loose rock and solid rock?

A. Yes, sir.

Q. Well, now, what is included within the classification "earth"?

A. Earth represents that class of material that can be moved without drillling or blasting, or that can be plowed reasonably with four horses.

Q. And what would you include in "hard-pan"?

A. Hard-pan would be that class of material which cannot be plowed with four horses, such as some of the heavy clays and materials that have boulders in, cement gravel, any class of material that cannot be ordinarily plowed with four horses and that does not have to be drilled or blasted.

Q. The price appearing on this page for hard-pan is forty-two cents?

A. Yes, sir.

Q. Is that what you consider the average price for hard-pan over the entire line?

A. Yes, sir.

Q. You appear to have estimated that about 25 per cent

of the material necessary to move on the entire line other than loose or solid rock would be hard-pan.

A. Yes, sir.

Q. What is your judgment with regard to the percentage of material in the lower classification than loose or hard rock, upon the lines in Minnesota which would be hard-pan?

A. Well, that is very hard to tell, and that is the very reason why I did not subdivide it into classifications on the Minnesota estimate. It is almost impracticable to classify Minnesota material. You can't classify swampy material; that comes under another head. That has got to be a material in itself for which they make special bids.

Q. Can't classify what?

A. Swampy material, of which there is a great deal in Minnesota.

Q. Well, it must be that if you can classify the entire line you can classify any portion of the line?

A. No, sir, not necessarily.

Q. Isn't it necessary to have a familiarity with the details and come to a conclusion upon the details before you can come to a conclusion upon the entire exhibit?

A. Yes, sir, if you don't go into too much detail you can, because you can divide a line into districts and eliminate solid rock from all your quantities and form an estimate as to about what it would cost to move that class of material. Now, you take that estimate for that district, and multiply it by the number of yards, and go to each district in the same way, and then after you have added them together, and divided by the total, you have got a general average of what that material will cost outside of solid rock.

Q. Have you classified all material in Minnesota?

A. Yes, sir. Well, no, I haven't classified it into hard-pan and loose rock.

Q. Have you classified it into anything?

A. Yes, sir, solid rock and earth material.

Q. Solid rock and earth?

A. Yes, sir.

Q. Then you have made no estimate of the quantity of this swampy material?

A. No, sir, only a matter of judgment.

Q. And you have made no estimate as to the amount of hard-pan?

A. No, sir.

Q. And you have made no estimate as to the amount of earth?

A. No, sir.

Q. And are you unable now to give us your judgment as to the percentages of those materials which come within the designation you have made in your Minnesota estimate of earth?

A. No, sir, I could not. I have no details whatever, and never have gone into it in that way.

Q. Then upon what judgment or what facts or what estimates have you based the price of thirty-three cents per yard for moving earth in Minnesota, when it is only twenty-eight cents for earth upon the entire line, and when the average price for moving earth and hard-pan taken from details of grading as found in Exhibit 3 is only 31.5 cents per yard?

A. Well, I can only say that in Minnesota the earth material is on an average much harder to move than it is anywhere on the line of our road except west of the Cascade Mountains and through some portions of the mountains. The swampy material is extremely difficult to move and that is a certain proportion of the whole, just how much I would not be able to say, but I form my estimate on the fact that the earth material is very much harder to move and that I have a general idea as to what it would cost to move the average material in Minnesota, and that I do know what it has cost us

in the last three years to move some seven million yards of material, which would be a good proportion of the total estimated for Minnesota.

The MASTER: In Minnesota?

WITNESS: Yes, sir.

Mr. HOW: Have you the details of that cost with you?

WITNESS: Yes, sir.

Mr. HOW: You will offer them to them if they want them?

WITNESS: Yes, sir.

Mr. HOW: He offers you a schedule showing details of the actual cost of the work in Minnesota amounting to seven millions of yards within the last three years.

Mr. O'BRIEN: We were going to ask for those, Mr. How; that is, if you had any modern contracts we would like to have the contracts produced.

Mr. HOW: I don't know whether we have any contracts or not.

WITNESS: Yes, we have some contracts.

Mr. HOW: You can have whatever we have.

Q. Is it not true that in the report filed with the Railroad and Warehouse Commission by your Company, to which reference was made yesterday, the price for moving earth was placed at 29 cents per cubic yard?

A. While those estimates were being made, they came to me for what I considered the cost of moving different materials in different districts, and I gave them the prices of earth, loose rock and solid rock, but when it was returned it was all returned as earth and solid rock, and no classification in it.

Q. Well, I am not speaking of what the classification was, but was not the price for earth given at 29 cents?

A. You mean over the whole of Minnesota?

Q. Yes.

A. No, sir, not that I know of.

Q. And is it not true that for earth, properly speaking,

that is a liberal price now?

A. In some districts it is fair and some districts it is not. Now, I say not, because we have recently completed a contract for which we paid the contractor thirty-three and thirty-four cents, leaving out of question what it cost the railroad company. Now, that is on about thirty-five miles of road.

Q. Where was that?

A. That was the extension of the Minnesota & International.

Q. And when was that?

A. Within the last two years.

Q. Will you produce that contract?

A. I can produce the estimate; I can produce the contract. The contract doesn't give the total cost to the Company nor the total cost to the contractor. It gives the unit of prices which we paid the contractor.

Q. Well, will you produce the contract?

A. Yes, sir.

Q. And the estimates under it of the amounts?

A. Yes, sir, I will have them here.

Q. Now, I will return again to ask you whether or not 29 cents per yard for material properly classified as earth is not a liberal price?

A. You mean for the main line in Minnesota? That is, the main and branch lines in Minnesota as they exist to-day, in such work as we are doing now?

Q. I mean for the lines of this road in Minnesota for material which is properly classified as earth.

A. I would have to modify that somewhat, Mr. O'Brien, for the reason that our earth material is costing us now 35 and 40 cents; some of it goes a good deal higher than that, but some of it is being done under different conditions, and some that is heavier work than what we would encounter in the average main line work, if we had to duplicate our line. But

under ordinary conditions, 29 cents is a good price for earth work, Minnesota earth work; that is, Minnesota knolls, leaving out swamps.

The MASTER: You mean, generally speaking, over the line in Minnesota?

WITNESS: Yes, sir, if you classify clays and swamps as "hard-pan"; but if you classify clays and swamps as common earth and merely solid rock as rock, under the one classification, that is not high enough.

Q. I understand you to say, Mr. Darling, that under a proper classification, 29 cents per yard for earth would be a fair and liberal estimate for the cost to the Company of reproducing the present lines of the Northern Pacific Railroad in Minnesota.

A. Yes, sir, if you classify it as I stated before.

The MASTER: Into four classifications?

WITNESS: Yes, sir.

Q. And the only justification for putting the price of thirty-three cents per yard, which you have done in complainant's Exhibit 2, is because what you have classified as "earth" contains, in your judgment, considerable quantities of material belonging to a higher classification?

A. That, and the fact that I know what our work has recently cost us.

Q. Now, will you be good enough to take the map, Exhibit 1; take Duluth Terminals. What distance does that cover?

A. Well, that covers everything in the immediate vicinity of Duluth, I think.

Q. Does the map show that?

A. No, sir, but it don't go out any farther than the west end; I don't think it goes out quite as far as that.

Q. That was one of the divisions into which the Minnesota property was divided in the report?

A. I believe so.

Q. That was furnished to the Railroad and Warehouse Commission?

A. I believe so.

Q. The division known as "Duluth Terminals"?

A. Yes, sir.

Q. Can you tell the number of yards of material contained in the grading in that division?

A. I can't from my records here; I think we have the details of those in the office, though.

Q. In preparing Exhibit 3, did you ascertain that?

A. Yes, sir.

Q. You are not able to tell that now?

A. No, sir.

Q. Nor are you able to tell the number of yards of earth?

A. No, sir, I can't give the quantities there now. I do know something about the prices of that work though.

Q. Did you cause that grading to be measured for the purpose of preparing Exhibit 3?

A. It was measured only on the books; nothing ever done on the ground, and nobody else can do it.

Q. Did you make any personal inspection of it at this time?

A. No, sir, because I put a great portion of it in, and I know about it, and I know that no one can measure it.

Q. What does that division consist of, so far as the material is concerned?

A. Why, the yard work that has been done in the last few years has been pumped in from the bay, and it has been done at an average price of from eight to eighteen cents paid to the contractor, but there was a great deal of that material that has been put in first by building a bridge, over which they operated, and then filled in afterwards, and other portions of it after the bridge was built. A lot of slabs were

purchased, and a great portion of the bottom put in with slabs. Now, it is almost impracticable to get those slabs at this time, but even with the use of slabs, (those slabs would sink into the ground) we would have to put in a great deal more material than the profile would show, even after the slabs were put in, so it is very difficult to arrive at the price of that material in Duluth, or around the Duluth terminals.

Q. Well, did you arrive at any price in your own mind when preparing Exhibit 3?

A. Why, I arrived at a price because we have figured prices there; we have estimated work for the Wisconsin Central very lately, and some of that work went up 35 cents a yard. We have recently made a contract with the Wisconsin Central for the use of our line across Grassy Point, from that into Duluth. Well, now, we made a very detailed estimate of that material that went to make up that portion of the line we leased to them; we also made a very detailed estimate of some lines which the Great Northern had in Superior. We went very much into detail in that, got all our quantities, and those prices went up to something like thirty and thirty-five cents a yard.

Q. Did you make a separate estimate of that division at any price when you were preparing Exhibit 3?

A. No, sir, I did not. That estimate is merely a matter of judgment of what it would cost to build that line.

Q. Do you know what the price claimed for that was, in the report made to the Railroad and Warehouse Commission?

A. No, sir, I do not. I have seen the figures, but I could not say now what they were. That is, I have seen the total cost; I never saw the quantities, or rather I never saw the prices per cubic yard. But when I used my own judgment in making the prices and multiplied by the quantities, and compared them with the total, I saw that there was a difference.

Q. Now, is that true with regard to each one of the divisions into which the Minnesota property was divided, with reference to the report made to the Minnesota Commission?

A. Well, yes, to a large extent it was.

Q. Then you made no separate estimate of the amount of material and no separate estimate as to the price?

A. No, sir, I did not.

Q. That is, in preparing Exhibit 3?

A. Yes, sir.

Q. Then I understand, Mr. Darling, that in preparing Exhibit 3 you ascertained that the Company had made a report to the Railroad and Warehouse Commission of a gross number of yards of material required for the grading?

A. Yes, I did ascertain that.

Q. That certain corrections had been made to that report by Mr. Morgan, the engineer of the Commission?

A. No, when I took that estimate to check it, I asked men who made up that estimate how it was made and in what shape it was made, and they explained to me, and also I had heard before about this difference in estimates, and I had asked these men if this had been checked up with the letter which Mr. Morgan had written about the difference in their estimates, and they said that it had, that they had sent men over the road and checked this estimate up and had modified their estimate. I don't know whether they agree with Mr. Morgan or not.

Q. It was the modified statement after Mr. Morgan's letter?

A. Yes, sir; I took as thorough a check as I could get of it. The more checks we can get the better.

Q. And then, without going over the divisions in detail, you re-arranged the classifications according to you own judgment, and recollection?

A. Oh, well, of course I went over a district in this way: take, for instance, from Minneapolis to Little Falls, I would

go over an estimate of that kind, and say that is worth about eighteen cents a yard to the Company, and then go over the line between Little Falls and Staples, (that I am very familiar with and know what they paid per mile) and say that is worth 28 to 30 cents.

Q. I am not speaking of the prices now, I am speaking of the classification of the material.

A. That is just what I was talking about, Mr. O'Brien, because from Little Falls to Staples, for instance, there is a certain class of material in there, and you know about what that runs per mile. In fact, I know what the contract price for that was and what it cost us at the time it was built. Then the portion from Little Falls to Minneapolis was very light work, and very easy to move, and I know that is a very low-priced work. From Brainerd to Duluth I know what it cost to move that class of material, know about how much it runs per mile for a number of miles. Now, you take those districts, and multiply the yards per mile by the number of miles and take your measurement, and you get a very fair idea of what it costs to move an average yard of material. The rock in that case cuts no figure because that is a very small proportion of the total.

Q. I am now speaking of the classification.

A. I had but one classification: that is earth.

Q. You accepted the total handed to you in the manner you have described?

A. Yes, sir.

Q. But increased the price?

A. Yes, sir, the price was increased.

Q. Because, in your judgment, some of the yards of the material classified as earth belonged to a higher classification?

A. Yes, sir.

Q. But, in doing that, you made no estimate as to the number of yards?

A. Except as to districts. I have never made an estimate of yards of swamp lands or yards of knolls, or anything of that kind, but I would go from Duluth to Brainerd and I would make up my mind what it would cost per cubic yard to move that district, that particular piece of work. I didn't take it by the sections that they divided, but I took it by my own sections when the classes of material varied. From Minneapolis to Little Falls would be one district. I know about how much that would run per mile and know about what it is worth per yard to move it. From Little Falls to Staples the same way And, in fact, all those districts were made just in the same way.

The MASTER: Without regard to classification?

WITNESS: Without regard to classification.

Q. Taking the division, Bald Eagle to Duluth, what is the character of the material there?

A. Well, I know less about that district than any portion of the railroad, but I know there is a good deal of sandy material in there. There are some swamps, and when you get to Carlton, or some point just west of Carlton, from there into Duluth they have extremely heavy and very bad material to move, and it would be impracticable to make an estimate to say what that did cost from Carlton to Duluth. They worked on that for years after the road was built; cuts slipped in, banks slipped and settled and run. It would be very difficult to make an estimate.

Q. What would be a fair average price there?

A. A fair average price of that work?

Q. Yes.

A. To the railway company?

Q. Yes; I mean on that division.

A. On the whole thing?

Q. From Bald Eagle to Duluth.

A. Well, I should think 33 or 34 cents a yard. That includes all classes of material, except the solid rock. The solid

rock on that line is very distinct, as it is on all lines in Minnesota.

Q. The Fond du Lac branch; where is that?

A. The Fond du Lac branch runs along the lake shore from Duluth towards Carlton. It originally ran into Thompson. That was the old original Northern Pacific main line.

Q. What is the character of that material?

A. Most of it was originally a pile bridge, and was afterwards filled in, a portion of it by slabs and earth hauled in there. Now, that material runs as high as 38 and 40 cents, and with the slabs it would make it run even higher than that.

Q. How much of that is there?

A. Well, there is a very small amount of it.

Q. But what there is of it you think would run from 38 to 40 cents?

A. Yes, sir; if you would take into consideration the way it would have to to be put in.

Q. The Carlton terminals?

A. The Carlton terminals are a very difficult piece of work. It is down into the ground, and it is mud, and a good deal of scab-rock in there. It is right close to the older rocks.

Q. What would you say that was worth?

A. The Carlton terminals?

Q. Yes, to move the earth, what you would classify as earth?

A. Somewheres from 30 to 35 cents.

Q. Carlton to Cloquet?

A. That work would cost, including clearing and grubbing and everything—well, not including clearing and grubbing, but based on the fact that there was a great amount of clearing and grubbing to be done in there and that the work was all very close to the ground and that it is all difficult work to do, that work should run from 35 to 38 cents.

The MASTER: Exclusive of the clearing and grubbing?

WITNESS: Yes, sir.

Q. Gronningen to Banning?

A. I couldn't tell you. That is a little piece of work. That, I think, is very light work. I should place that very low, but without knowing very much about that.

Q. Well, how much, what do you call low?

A. Well, I would say eighteen cents was low.

Q. Rush City to St. Croix river?

A. Well, that is heavier work. I don't think, though, that would run over 23 or 24 cents to the Company.

Q. Wyoming to Taylors Falls?

A. Most of that work would run 23 or 24 cents.

A. White Bear to Stillwater?

A. I shouldn't think there was much difference, although I am not so well acquainted with that line from White Bear to Stillwater.

Q. Wouldn't it run 23 or 24 cents?

A. It may run higher than that.

Q. How many yards are there there?

A. I couldn't tell you, sir, without looking up the estimate.

Q. State Line to Staples?

A. That work will run 36 or 37 cents to the yard.

Q. St. Paul to Bald Eagle?

A. Well, that work runs very heavy, including the terminals. You mean just the line?

Q. I presume that is in the city limits. It doesn't include the terminals. Did you tell me about that?

A. I asked you whether it includes the St. Paul terminals or not?

Q. No, just from the city limits. St. Paul to Bald Eagle; that is just beyond White Bear. That is all very light soil, isn't it?

A. Well, no, it is not light soil. There is some pretty heavy

work in there, where we crossed those—there are several ravines in between St. Paul and White Bear.

Q. Well, the soil is light, isn't it?

A. The soil is light, but it is heavy construction, it has to be hauled, and a lot of that we trestled in the first place and it had to be hauled by train. There are three or four bridges. I don't know just what proportion of the total it is, but I think that work would run under 30 cents.

Q. St. Paul and Minneapolis, line A and B?

A. That is very heavy work; it is worth 40 cents a yard.

Q. How much?

A. 40 cents a yard.

Q. Minneapolis to White Bear?

A. 32 or 33 cents; that is through swampy material, a good deal of it.

Q. Northtown Junction to Staples?

A. Well, I have divided that from Northtown Junction to Little Falls.

Q. Very well.

A. The portion from Northtown Junction to Sauk Rapids would cost the Company, I should judge, about 23 or 24 cents; from Sauk Rapids to Little Falls, I don't think over 22 cents; from Little Falls to Staples, it would cost 35 cents.

Q. Well, what is an average, then?

A. An average of that line would be close to 28 or 29 cents.

Q. Little Falls to Brainerd?

A. That is very light work and very easy work. I don't think that would cost over 22 or 23 cents.

Q. Little Falls to Morris?

A. Little Falls to Morris would cost 30 or 31 cents.

Q. Staples to Moorhead?

A. I should divide that work from Staples to the divide between the Mississippi and Red rivers somewhere about Richland. It would cost 22 or 23 cents. Then from Richland to

Stockwood it would cost 38 cents. From there in, on the original main line, it would cost, I don't think, over 15 cents a yard.

Q. And what would you say would be a fair average then?

A. The average of that line would not be very far from 32 or 33 cents; that is about an average line in Minnesota.

Q. Wadena to Breckinridge?

A. Wadena to Breckinridge, that would run about 30 or 31 cents; there is some heavy work, but from the top of the hill east it is rather light.

Q. Winnipeg Junction to Grand Forks?

A. Well, that runs less, that is, 28 cents; except the Red Lake Falls branch, that would run at least 30 or 31 cents.

Q. Fertile to Carthage?

A. Well, that is what I gave you in the first place, from Winnipeg Junction around by Fertile to Grand Forks.

Q. Well, there seem to be separate divisions, Winnipeg to Grand Forks and Fertile to Carthage?

A. Oh, Fertile to Carthage, that is the Red Lake Falls branch. That would run 31 to 32 and 35 cents.

Q. Key West to Shereck?

A. That is the Keystone branch; I don't think that would run over 16 or 17 cents, perhaps 18 cents.

Q. Did you state a price upon the Duluth terminals?

A. No, sir, I did not.

Q. Well, will you?

A. I should say the Duluth terminals would run 27 or 28 cents a yard on the average; possibly 30. It is very hard work to get at the amount of slabs that was put in there, and the amount of piling they had to do. A lot of that ground you couldn't lay a track on without putting it on piling or slabs.

Q. Is the cost of moving solid rock the same in all instances?

A. No, sir. Well, I would call it the same in Minnesota,

because practically all solid rock in Minnesota is very hard trap-rock.

Q. Is that the case?

A. I think so, all solid rocks that I know of. Solid rock up around Carlton and Taylors Falls, in through there.

Q. The price that you have charged is the highest price?

A. Yes, sir.

Q. $1.25?

A. Yes, sir, the hardest rock we have got to move.

Q. $1.25 per cubic yard?

A. Yes, sir.

Q. And you say that all of the rock in Minnesota is practically the same?

A. It is very similar. There might be some rock that would have to be estimated differently; the rock I have reference to, there might be some material they would run across that they would have to estimate to a contractor as solid rock in order to pay for the cost of doing the work.

Q. In your estimate or statement, Exhibit 3—

A. I would like to say in connection with these prices that I would not like to go on record of these things being actual prices, because I would like to check them up. I might vary a little from these things; it is very hard work to sit down here and say exactly what all those things would go, to a cent. You might vary a little in your own mind, one way or the other, a cent or two.

Q. Now, Mr. Darling, isn't that absolutely necessary, in order to come to a correct conclusion as to these prices, what you suggest?

A. No, sir, I don't think it is, because the prices over the state would average, when you began to go over them a second time—

Q. Otherwise it is mere guess-work, isn't it?

A. No, sir, it is not guess-work. It is judgment; it is opin-

you form on a piece of work.

Q. You mean to say that you would be willing to either ke or let a contract after making an estimate in that way?

A. Yes, sir, I would take a contract; and, in fact, the only y a contractor can take a contract, is by going over the line l knowing the class of material that he has got to move and out what it is worth to move it.

Q. You might take a contract at those prices, but would u let it?

A. Well, if it was a good contractor I would. Some of em don't.

Q. Yes, but you know whether it is a good contract or not, you?

A. If your judgment tells you it is a good contract. And ontractor is always—

Q. But did you ever let a contract on an estimate made by u in that way, as chief engineer of the road?

A. Always: I always make an estimate in that way, in- riably make an estimate in that way. That is the way all imates are made, you have got to do it. In the first place, u have got to know what it costs to move certain classes of terial.

Q. Those are merely your preliminary estimates?

A. Yes, sir.

Q. Did you ever pay for a contract on an estimate made in it way?

A. No, sir, I never did.

Q. Well, would you pay for a contract on an estimate made the contractor in that way?

A. Well, accepted his figures. He makes the bid, and se bids are based on his knowledge and judgment of that rk, and you pay him that way.

Q. I am talking of the quantities. You never permitted a al estimate to go out from your office in which the estimates

as to the quantities were made in the way you have made these estimates?

A. No, sir.

Q. You wouldn't do it?

A. No, sir.

Q. You wouldn't think that was consistent with your reputation, would you?

A. No, sir.

Q. As an engineer?

A. No, sir, nor you couldn't.

Q. It is only for the purpose of testifying in these cases that you make any such loose estimates as that?

A. That is all, but that is the only estimate, as a matter of fact, you can make in this class of work.

Q. It is the difference between the voucher and the affidavit?

A. Yes, sir, but in making an estimate in this case, in reproducing a line, you can't tell what you have got to run against and your estimate has got to be elastic.

Q. I know, but you have allowed ten per cent for your contingencies?

A. Well, that is contingencies.

Q. You have allowed three per cent for your engineering?

A. Yes, sir, but how else can you make an estimate? You can't go on the ground and make it any better.

Q. Well, can't you?

A. No, sir.

Q. Isn't it true that if you went upon the ground, and if you subdivided this property into sections, looked over each hundred feet or thousand feet of the road, you would be much better satisfied that your estimate was correct?

A. No, sir, because you have got to figure on so many things; that is, going onto the ground, if you know the country, if you know the class of material and know the profile and

know the haul, that is all you want, because going onto the ground don't do you any good, as far as making perliminary figures are concerned, because you have got to know how you are going to get your outfits in there, where you are going to place your outfits, where you are going to place this camp and that camp, and how you are going to do your work.

Q. When the attention of the Company was called to the error in the number of yards on the Duluth division, last August, did not the representatives of your department go over that ground for the purpose of ascertaining whether the report to the Commission was correct, or Mr. Morgan was correct?

A. Well, they went over for the purpose of checking up the road-bed to see what they would use as a base for figuring on.

Q. Wasn't that the very first thing that was done for the purpose of ascertaining who was correct?

A. Why, yes; in a detailed case you must do that.

Q. And if you had made that survey in each case as to each detail, would you not be more satisfied as to the correctness of your estimate?

A. As to quantities, yes, sir, very much more so, but not as to prices.

Q. If, therefore, you were presented with a statement of a competent engineer who had done the work in that way, would you not say the presumption was that his statement of the quantities was correct rather than yours?

A. Well, no, sir, not a bit. It would depend entirely on who the man was and whether he knew or understood the conditions under which that work was done and would have to be done.

Q. Certainly. I am speaking of a man equally competent and equally conversant with the situation.

A. Yes, sir.

Q. You would consider that his estimate was more likely to be correct?

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A. Very much more so as to quantities. I would like to qualify that, however, by saying that that man should have measured that work on the ground.

Q. (Deft's Ex. B shown witness.) Do you know whether that is a copy of the letter from Mr. Morgan to Mr. Elliott, suggesting these corrections that we have been speaking about?

A. I think it is, yes, sir.

Mr. O'BRIEN: We offer Ex. B in connection with the cross-examination.

Mr. HOW: I do not ask that the original be produced, but I object to it on the ground that it is incompetent, irrelevant, immaterial and not proper cross-examination.

Q. Are complete records of the cost of construction kept in the engineering department of the Northern Pacific Railway Company?

A. No, sir.

Q. Where are those complete records kept?

A. The comptroller now keeps the only records that are kept.

Q. Would it be possible for you, from an inspection of any of the books of the Northern Pacific Railway Company, to give the exact cost of the grading of the lines in Minnesota?

A. I don't think so; in fact, I know it would not, because they have no records from which they could get the cost—for instance, of the old St. Paul & Duluth; the records on that line are very incomplete.

Q. With the exception of the lines formerly owned by the St. Paul & Duluth Railway Company, would it be possible to give the exact cost?

Mr. HOW: Do you know anything about it?

WITNESS: No, sir, I couldn't say; I never went into that and I couldn't say as to that.

Q. Do you know whether the line was built by contract?

A. Portions of it were.

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Q. I am speaking of the lines in Minnesota.

A. Portions of them, most of them. Some of them were built by other companies and purchased.

Q. What portions of the line were graded pursuant to contracts made between the Company and some other person?

Mr. How: This is objected to as not proper cross-examination, the witness has offered no evidence whatsoever with regard to the original cost of constructing this line. That evidence will be offered, so far as we can give it, by other witnesses, and I presume he would say he doesn't know, at that. Perhaps he won't.

A. I can only tell as to some portions of them.

Q. Very well, tell us as to the portions you know of.

A. I know that the line from Northtown Junction to Sauk Rapids was done by contract. The line from Little Falls to Staples was done by contract. The St. Paul & Duluth lines were purchased. A portion of the line from Winnipeg Junction to Grand Forks was purchased, and I don't know but what it was all purchased. The line from Brainerd to International Falls was either purchased or built by contract. The rest of it I am not sure of.

Q. Have you not, in your department, records of the final estimates allowed upon all or nearly all of these lines?

A. Wherever the Northern Pacific built them and where they were not purchased, I think we have the records, or most of them.

Q. Why have you not given the exact number of yards in those different portions according to those estimates?

A. Well, because those estimates are not the cost to the Railway Company, those estimates are merely what we pay the contractors.

Q. Well, those estimates give the quantities, do they not?

A. Those estimates give *some* quantities, yes, sir.

Q. And those estimates also give the price paid the contractor?

A. Yes, sir.

Q. Can you state, with reference to any of the divisions to which I have called your attention, the actual contract price, or the actual number of yards of earth moved in that division, as shown by the final estimate from your department?

A. No, sir, except that I happen to know what some of the contract prices were from Minneapolis north towards Staples.

Q. What were those prices?

A. I think the prices from Northtown Junction to Sauk Rapids was 14¾ cents—of course that included haul—and from Little Falls to Staples I think the earth price was 23 cents, without the haul and extra bills.

Mr. HOW: When was this, Mr. Darling?

WITNESS: Oh, that first one was built (between Northtown Junction and Little Falls) in the fall of 1884 and fall of 1883.

Mr. HOW: This is objected to as not proper cross-examination; it has nothing to do with the present cost of reconstructing the road, that I know of—24 years ago.

Q. Go on.

A. The line from Little Falls to Staples was constructed, I think, in the fall of either 1888 or 1889.

Q. How do the prices paid contractors now, for moving earth, compare with the prices prevailing at the time those lines were constructed?

A. At the time those lines were constructed there was very little contract work going on, we could get very good prices for it, and today we can get very good prices for the amount of work that we are doing, but there is an immense plant available and we have no work for them, therefore men will come in and do a small bit of work for a small profit, but if we were to start to build two or three hundred miles the price would immediately go up because all the available plant would be

used, and this estimate of mine is merely based on what it would cost, providing the system was constructed in ten years; that is, we would have to go and build the track complete, or about 780 miles of track a year. If we could string this estimate over fifteen or twenty years I could reduce, materially, the cost of grading and some of the other work.

Q. The actual prices paid now for moving earth are about the same as the prices paid back at the time these portions of the line were constructed?

A. Oh, no, no, sir; it is higher.

Q. Well, I ask you that question. I thought you said they were about the same, but that if you were to immediately let a contract for the reconstruction of the Northern Pacific, it would "boom the market".

A. No, I didn't mean to say that they were the same prices we paid fifteen or eighteen years ago, but the prices are lower this year than they were the last two years.

Q. How do the present prices compare with the prices for moving material, which were paid at the time the portions of the line were constructed, for which you have given the prices?

A. Take, for instance, the line from Minneapolis to Little Falls, we paid, I think, 14¾ cents; today you couldn't get that done for less than 17 or 18 cents. That is on the supposition that we built merely that one line, just now.

Q. What are the current prices today for the moving of earth in railroad contracts as they are ordinarily prepared?

A. We couldn't get a very much different price today from what we did two years ago, but those prices are based on different conditions. Now, two years ago, we would have to classify that very favorably for the contractor, the lines would be drawn very closely; today the price, we will say, that they would give us, would cover everything outside of solid rock, or perhaps they would say, "We won't ask you over half a cent

for overhaul, and we might haul free," but the prices really remain about the same as they did two years ago.

Q. Well, what is the current price for moving earth?

A. 19 to 23 cents, *to the contractor.*

Q. I know. From 19 to 23 cents?

A. Yes, sir.

Q. For hard-pan?

A. About 35 cents; 35 to 37.

Q. For loose rock?

A. 45.

Q. For solid rock?

A. 95 cents to about 98 cents.

Q. Now, the almost universal custom of letting contracts is that the contract is let at so much per yard, of a certain character of material—earth, hard-pan, loose rock, or solid rock?

A. Yes, sir.

Q. And after the work is completed, the engineering department classifies the yards of materials which have been moved, and the contractor is paid for so many yards of material at the contract price?

A. Yes, sir, plus any extra bills.

Q. Yes, of course, plus any extras. What has been the last new line constructed in the state?

A. Big Forks to International Falls.

Q. When was that constructed?

A. Within the last two years.

Q. Have you in your office a complete record of the cost of grading that piece of road?

A. Yes, sir, I have it here. (Producing paper marked Complainant's Exhibit 4.) I should like to explain about that Big Forks and International, if you have no objection. This estimate shows the total yardage moved, of approximately 368,325 yards, at a cost of $214,515. Our contract price was 30 cents

per yard, but adding the extra bills and transportation to the amount paid him, it really figures 33.4 cents per yard that we paid the contractor. Now, after that contractor got away and we ballasted the road, the track sunk down below the level of the water and we had to haul in a lot of ballast to fill up—ballast was the only thing we could get to haul in—and after our ballasting was all done last winter, we arbitrarily charged a certain portion of that ballasting to grading, without increasing the number of cubic yards, and we cannot get at the number of cubic yards until that road is finished. They have been working all the spring on it and have not been able to get the road completely finished yet. After that is done, we will measure up the yardage and get the actual price to the Company, which will be considerably less than 58 cents.

Q. Where are the records from which Complainant's Exhibit 4 is compiled?

A. In my office.

Q. Those are part of the records which you stated yesterday were open to the inspection of the State?

A. Yes, sir. I will say that cost is obtained from the auditor's books, copy of which he gives us every month, and then checked with our own work.

Q. I understand, Mr. Darling, that, upon request, the contracts, final estimates, vouchers and complete records from which Ex. 4 was compiled, are open to the inspection of the State?

A. Yes, sir, so far as I know.

Q. Well, is there any doubt about that?

A. Not in my mind, no, sir.

Q. Is there any doubt about your authority in the matter?

A. Well, I have no authority to give up the vouchers of the Company, they are in charge of the comptroller. I will give up any estimates I have got.

Q. These statements were presented yesterday and today,

upon the statement that the records were open.

A. Well, I presume they are open, but I can't vouch for anything that I don't know anything about.

Mr. How: I appear for a stockholder and not for the corporation, but I haven't any doubt that full access will be allowed to you, to all the records of the Company.

Q. Have you the same statement with reference to each of the other divisions,—Minnesota & International road?

A. I have not made them up because this was the only branch that we have done in the last two years. but I presume that we can get them all north of Bemidji. I don't think we could south of Bemidji, or, perhaps, south of Walker. I think we can north of Walker, but south of Walker it was built by another company and I am not at all sure that we have those records.

Q. Will you prepare a similar statement with reference to the other divisions of the road, as far as you are able to?

A. Of that same road?

Q. Yes, sir.

A. Yes, sir, would be very glad to.

Q. Can you prepare a statement similar to Complainant's Ex. 4 with regard to any other division of the lines in Minnesota, except the Minnesota & International?

A. I couldn't say as to that, I would have to look it up to tell, to see what shape the vouchers and estimates and old records are in. It would have to be with some of the newer lines.

Q. Well, there are several comparatively new lines, are there not?

A. Well, there are the lines that we have recently built in the last three years, those are here.

Q. When was the line from Brainerd to Staples built, or from Little Falls to Staples?

A. It was built in 1888.

Q. Have you the records of that?

A. That was built by the St. Paul & Northern Pacific; I don't know whether we have the records or not; possibly we have. I think a good many of the records were burned up in the fire they had some years ago at Westminster street; I know several were, I don't know whether these were, or not. I will do the best I can on it.

Complainant's Exhibit 5, here produced by the witness pursuant to previous request, relates to tunnels.

Complainant's Exhibit 6, produced by witness pursuant to previous request, relates to freight cars and passenger car mileage, etc.

Complainant's Exhibit 7, produced by witness pursuant to previous request, relates to mileage of different divisions in Minnesota and other states, these statements being marked as herein indicated, at this time, for the purpose of identification.

By consent, the witness is excused from further attendance, subject to call.

Q. Mr. Darling, I want to ask, before you leave, if you will give instructions to your subordinates with reference to access to those records, and especially that Mr. Morgan, or his representative, shall have access to your grading quantities in these different districts.

A. Yes, sir. That is, in Minnesota.

Adjourned until Thursday morning, June 11, subject to change upon notice to the Master.

On June 15, 1908, at 10 o'clock A. M., the hearing was resumed.

THOMAS COOPER,

Sworn on behalf of Complainant, testified.

By Mr. How:

Q. Will you state your name, your residence and your present occupation?

A. Thomas Cooper, St. Paul, Land Commissioner Northern Pacific Railway Company.

Q. Please state, in detail, the time of your connection with the Northern Pacific Railroad Company, or the Northern Pacific Railway Company, and the character of that connection and your location during your service.

A. I entered the service of the Northern Pacific Railroad Company as clerk, in the construction department, in June, 1882; continued in that position (promoted to be chief clerk), until May, 1886, residing at Brainerd and St. Paul. Was transferred to the position of chief clerk in the operating department June 1, 1886; occupied that position until June 1, 1887, residing at Minneapolis. Was transferred to the position of chief clerk of the construction department, June 1887; occupied that position one year, residing at Tacoma, Washington. Then left the service of the Company for one year, reentering the service July 1, 1889, as chief clerk in the construction department, occupying that position until May 1, 1890, residing at Helena, Montana. From May 1, 1890, until September 1, 1894, occupied the position of general manager Northern Land & Development Company, the company in which the Northern Pacific Railroad Company owned a controlling interest, residing at South Bend, Washington, and handling the townsite at that point. September 1, 1894, was appointed assistant auditor Northern Pacific Coal Company, a subsidiary corporation of the Northern Pacific Railroad Com-

pany, and occupied that position, also the position of assistant general manager of that Company, until 1896.

Q. Where did you reside during that period?

A. Residing at Tacoma, Washington. Was appointed western land agent of the Northern Pacific Railroad Company June, 18[illegible]5, (I had the two positions for awhile), and occupied that position under the receivers of the Northern Pacific Railroad Company and under the Northern Pacific Railway Company after the reorganization, until July, 1901, residing at Tacoma, Washington. Was then appointed assistant to the President, and continued in that position until April 1, 1902, residing at Tacoma, Washington. On April 1, 1902, was appointed General Manager of the Northern Pacific Railway Company, and occupied that position until April 1, 1904, residing at St. Paul, Minnesota. Was then appointed to my present position as Land Commissioner of the Northern Pacific Railway Company, continuing in that position since, residing at St. Paul, Minnesota.

Q. What was the character of your duties as western land agent of the Northern Pacific Railroad Company?

A. I handled the land-grant of the Company in the states of Washington, Idaho and Oregon, and incidentally did such other special work as was assigned to me from time to time.

Q. Was the character of your work in that position such as to make you familiar with the value of properties through which the railway ran?

A. Quite so, in the three states I have named.

Q. What was the character of your services with the Northern Pacific Coal Company?

A. I was assistant auditor in charge of the accounts, and later assistant general manager, and in that capacity had charge of the operation of the coal mines of the Company under the general manager, the coal mines at that time owned by the

Northern Pacific Coal Company, being located at Roslyn, Washington.

Q. What has been and is the character of your services as Land Commissioner, your present position?

A. As Land Commissioner, I have charge of the land-grant of the Company for the entire system; and I also have charge of the right-of-way of the Company, the purchasing of additional property which the Company requires for right-of-way and for other purposes, the leasing of the right-of-way, and I am also second vice-president of the Northwestern Improvement Company, a subsidiary corporation of the Northern Pacific Railway Company, and in that capacity have charge of all of its land interests.

Q. How familiar are you with the properties of the Northern Pacific Railway Company, as they now exist, and how did you obtain your knowledge?

A. In the various positions that I have held it has been necessary for me to go over every part of the Northern Pacific system frequently, and I cannot recall at this minute any part of the system that I have not been over; I am especially familiar with all of its properties in the larger cities—its large terminal properties—having personally walked over all of those while I was General Manager of the Company.

Q. What opportunities have you had for familiarizing yourself with the value of the real estate of the Company, that is, the right-of-way, the terminals, and other real estate?

A. I had the general knowledge acquired in fulfilling my duties as Land Commissioner, which necessarily made me familiar with land values along the whole line of the railroad, excepting in the cities, and, to some extent in the cities. I have purchased, since December 1, 1904 (when I was placed in charge of the right-of-way of the Company), something like (or, to be exact), $6,139,542.35 of property scattered along the whole line from St. Paul to the Pacific coast.

Q. Have you prepared a statement of that property which has been purchased by you since you have been Land Commissioner?

A. Yes, sir.

Q. Will you produce it, please?

Witness produces statement, and same is marked "Complainant's Exhibit 8—Cooper."

WITNESS: I wish to add to the answer that I have given that, prior to my appointment as Land Commissioner, and while occupying the position of western land agent, I negotiated, on behalf of the Company, for the purchase of some of its present terminal property at Seattle and the greater part of its terminal property at Tacoma.

Q. If I understand this Complainant's Exhibit 8, the first column shows the location of the property which you have purchased; the second column shows the number of miles that that location is from St. Paul; the third column shows for what purpose the property was purchased; and the fourth column shows the cost of the property when purchased?

A. That is correct.

Q. What is the fact in regard to the character of your own personal service in making those purchases shown in Exhibit 8?

A. Wherever I am instructed to purchase property, where it is evident that there will be a considerable sum involved, my general rule is to go over the property personally and size up its value, the difficulties that we are likely to encounter in purchasing it, and all of the other features that are necessary in order for me to intelligently pass upon the purchases; and where the property is in a large city we adopt various methods, usually have some local real estate man do the purchasing for us, trying to keep ourselves concealed,—sometimes successfully, but generally unsuccessfully. Where it is the right-of-way for a new line, we have men in our employ, trained in that character of work, whom we call right-of-way agents. I discuss the

work with them, size up the character of the country, estimate the probable value of the land, sometimes go over the line, and thus familiarize myself and place myself in a position to intelligently pass upon the purchases.

Q. Has your experience in your various positions qualified you to have an opinion upon the value of the right-of-way, terminal grounds and other lands outside of the land-grant, particularly, of the Northern Pacific Railway system?

A. Yes, sir.

Q. Have you prepared a statement showing the estimated value upon present cost to produce, if the same were not owned by the Northern Pacific, all of the lands of the Northern Pacific used in its operating department?

A. I have.

Q. Will you produce that, please?

Statement produced and marked "Complainant's Exhibit 9—Cooper."

Q. This statement is marked Complainant's Exhibit 9, and purports to be a valuation of right-of-way and other operating property owned by the Northern Pacific Railway Company, and by other railway companies, the capital stock of which is owned by the Northern Pacific Railway Company in whole or in part, as indicated, as of date June 1st, 1908. Please state how this statement has been prepared.

A. When I was advised that I would be required as a witness in this case to testify as to the value of the right-of-way and operating property, I started in to prepare this statement in the following manner: Some two years ago the Company was called upon by the State of Minnesota to prepare a valuation of its property in the state, and I was instructed to prepare the value for that report of the right-of-way and real estate used in its operation. About a year ago I was instructed to prepare myself to testify as a witness in the Spokane rate case on the value of the right-of-way and operating property of the

Company, covering its entire system, which I did, and testified in that case.

Q. And you also prepared the Minnesota statement?

A. And I also prepared the Minnesota statement for the State Railroad Commission, as explained above. In giving my testimony in the Spokane rate case, I used in that valuation the figures that I had prepared for the Minnesota State Railroad Commission, as showing the value of our real property in Minnesota. The statement that I have prepared in this case is the same that I testified to in the Spokane rate case, prepared as I have explained, excepting that I have added some properties acquired by the Company. Since that statement was made, I have corrected my figures as to the Seattle terminal, because at the time I made the statement in the Spokane rate case we did not know exactly what division would be made between the Northern Pacific and the Great Northern Railway Company of some properties at Seattle purchased jointly by the companies, and I assumed that the division would be half and half. Since then the segregation of that property has been made, and the Northern Pacific's share is slightly less than half. Therefore, I have corrected my figures as to the value of the Seattle terminal to accord with the now known facts. I have also added to my Spokane-rate-case figures some new lines that we have constructed since, or are now under construction; or, in other words, I have simply brought the Spokane-rate-case statement down to date.

Q. What method have you employed in determining the valuation of these properties, for instance, the valuation of the property in St. Paul?

A. When I was instructed to make up the Minnesota valuation for the Railroad Commission, I employed a man specially to travel over all of the lines owned by the Company in Minnesota, stopping at each station, discussing with local real estate men or others informed, as to the values of property abutting on

that owned by the Company. This man that I speak of was instructed not to cover in that manner, or in any manner, St. Paul, Minneapolis or Duluth, but he did cover all of the rest of the state. In St. Paul, Minneapolis and Duluth, I employed local real estate dealers, three in each town.

Q. Name them, please.

A. In St. Paul, O. L. Taylor, W. C. Read and J. J. Watson; in Minneapolis, L. B. Elwood, F. E. Barney, J. Arthur Ridgeway; in Duluth, E. C. Little, J. D. Stryker, and Luther Mendenhall. These men were instructed to prepare a conservative estimate of the cost of reproducing the properties owned by the Company in each of their respective cities.

Q. That is, the real estate properties alone?

A. Only the real estate, of course; and they were furnished maps showing the properties which the Company owned.

Q. That is, upon the basis that the properties were all unimproved, did not include buildings?

A. They were instructed to assume the property to be unimproved; simply to estimate the value of the bare real estate. They prepared their figures, taking two or three weeks to make them up in each case, and then submitted them. I went over their figures with them, with some care and in detail, discussing with them the basis on which they had arrived at their figures, checking their statements with my own knowledge of the situation, and with the actual price of property which the Company had purchased, and in no case did I increase the figures submitted by the real estate men. I did make some slight decreases. And I then added to those figures my judgment as to the cost of the improvements and the damages to other property not purchased, that the Company would likely have to pay in buying the property; or, I might put it, I added a percentage to the figures of the real estate men to represent the difference between what the Commission in its form of report submitted to us was the right-of-way value and the real

estate value, and from those figures I made up, so far as the three cities named are concerned, my estimate for the State Railroad Commission. As to the balance of the right-of-way and operating property in the state, I made up the valuation from the information acquired from the employe that I sent out over the line for that purpose, as I have above explained, from my own knowledge of values of the property, from the prices that we had paid for property, and from the information which we derived from our leasing system, which I will explain is based on charging as a rental six per cent on the value of the property. In order to determine that value we are in constant correspondence with our agents at all points along the system, who are instructed to familiarize themselves with values by inquiry among real estate men, and by posting themselves as to transfers, and in that way we acquire a certain amount of information as to the value of our property at stations. From all of the different sources that I have indicated, I made up, personally, the figures for the Minnesota valuation submitted to the State.

Q. In what other cities did you pursue the same course with regard to terminals?

A. In my previous answer I explained our method of making up the valuation for the state of Minnesota used in the report to the State Railroad Commission. When I was instructed to make up the valuation for the Spokane rate case, I employed local real estate men, F. B. Grinnell, and W. C. Samson to make an estimate of the value of our property in Spokane. I instructed my assistant, the western land agent at Tacoma, to make up the valuation for Tacoma and Seattle, consulting with local real estate men at these places as to the value. He also made up the value for Everett, Washington, Aberdeen, and Hoquiam, Washington, on Gray's Harbor. I made a visit to the coast while preparing this valuation, and went over with my assistant the figures that he had prepared covering Tacoma,

Seattle, Everett, Aberdeen and Hoquiam. Both my assistant, Mr. Plummer, and myself, were personally familiar with values in these five cities, especially so in Tacoma, and we had to aid us in preparing the value, statements furnished us by the Chicago, Milwaukee & St. Paul Railway Company, and by the Oregon & Washington Railroad Company (part of the Harriman system) of what they had paid for properties they were then purchasing in Tacoma and Seattle. That gave me very complete information as to the values in all of the cities that I have named. I prepared the statement in the Spokane rate case personally by taking all of the information from all of the different sources available, my own knowledge of the property, the prices that we had been paying for property along the entire line as shown by the schedule of purchases which I have submitted in this case, and from all of this information the statement in the Spokane rate case was made up, and that statement, as I have explained, is substantially the same as submitted in this case, with the changes and corrections which I have stated.

Q. This statement shows, on added leaves, "Wisconsin Recapitulation" and a recapitulation for each state, I take it, through which the Northern Pacific system runs?

A. Yes, sir.

Q. Take, for instance, the North Dakota recapitulation, the first line is Fargo to Jamestown, 4,183.8 acres, the valuation placed upon that is $450 per acre; the last line is Fairview branch, 152.75 acres; the value placed upon that is $100 per acre. Will you state how you arrived at those respective valuations?

A. I took the right-of-way maps of those two districts, Fargo to Jamestown and Fairview branch, and, starting at Fargo I made an approximation of the cost of reproducing our line through that city.

Q. Your right-of-way, you mean, through that city?

A. The right-of-way through that city. The data for that was based very largely upon the information furnished by our local agent from time to time as to the valuations for leasing purposes, which I have explained above. Also—

Q. You own property within the city of Fargo which you do lease at present, which is under lease at present; is that the fact?

A. Yes; a considerable part of our right-of-way at Fargo is leased for industrial and commercial purposes requiring side-track facilities; and in making up these leases we procured the information as to values for the reasons I have explained. In that way I arrived at a valuation of our Fargo property. I then, proceeding west, estimated the value of the right-of-way between Fargo and Casselton. I know about what farm land values are there, and I made my estimate accordingly. At Casselton I stopped and estimated the value of our right-of-way through that town, continuing on in the same manner all the way to Jamestown. That produced a certain total valuation which, divided into the acres, gave me the average per acre shown on the statement. I will explain that in making this estimate, for instance, covering the district that I have just spoken of (Fargo to Jamestown) I had some assistance in properties we had been purchasing in that district for various purposes; in fact, if you will examine the statement of property purchased, which is an exhibit in this case, you will find that there are very few districts along the line where I did not have, to assist me in making this estimate of value, actual prices that we had been paying for property.

Q. In recent years, since you have been Land Commissioner?

A. Property which I had purchased. Now, explaining further the Fairview branch, that is a short branch running through a very good agricultural country, running through no towns worth mentioning, and it was purely a question there of the agricultural value of the area taken, or rather

the area owned, plus the severance damage.

Q. Now, will you explain the difference between the $450 per acre for the Fargo to Jamestown district, and the $100 per acre on the Fairview branch? Perhaps you have explained that so that I understand it, but I would like the Master to understand it. Does that difference lie in the difference in value of the lands as agricultural lands?

A. There is very little difference in the value for agricultural lands in those two districts. The principal difference in the value is the property in the cities through which the line from Fargo to Jamestown runs, and there is no property of that character on the Fairview branch.

Q. So that that property in the cities brings up the average per acre of the district?

A. Very decidedly. Very decidedly; in fact, I should offhand say that the value of the right-of-way between Fargo and Jamestown, outside of the cities, would not be over $125 per acre instead of the $450, and the difference between $125 and $450 per acre is made up of the town and city property.

The MASTER: These valuations are all exclusive of improvements?

WITNESS: Exclusive of any improvements, yes. I should explain, perhaps, that in preparing the large statement Exhibit 9, I have shown one set of figures that represent the total area of the property owned by the Company used in the operation of its railroad, and the value of that property. Following that, I enumerate a number of the larger terminals owned by the Company and their value. I then follow that with another set of figures showing the area which the Company owns and its value after deducting these large terminals from the total, the idea being to produce a figure per acre and per mile that would show more intelligently the value of these properties than if we included the very large terminals and the high valuation that these terminals have, the group of terminals which

I have shown separately having a value of approximately $75,000,000 out of the total value of all the property of $108,000,000. Another purpose which I had in mind in making up these statements in the manner I have explained by eliminating the large terminals was so that I could check my judgment by actual purchases which the Company was making of right-of-way in various places, and I have prepared a statement showing the actual cost of right-of-way purchased in the years 1905, 1906, 1907 and 1908 for line changes and new lines.

Q. Will you produce that statement?

Statement produced by witness, marked Complainant's Exhibit 10—Cooper.

Q. Complainant's Exhibit 10—Cooper, is your statement showing the actual cost of right-of-way purchased in the years 1905 to 1908, for line changes and new lines, as described. How do the figures shown in that statement of the cost per acre of right-of-way compare with the valuations per acre of right-of-way contained in your Exhibit 9?

A. In Exhibit 10 I have excluded any terminal property; therefore, it is a fair comparison with the figures shown on my Exhibit 9 after deducting the terminals, that is to say, the terminals in each case are eliminated. Exhibit 10 shows that we purchased for line changes that we are now making between Wadena and Glyndon, Minnesota, 608.129 acres, containing 23.320 miles of right-of-way, the actual cost of which was $163,050.40, producing a cost per acre of $268.12, which compares with the $250.69 average cost per acre shown on Exhibit 9 of our right-of-way in Minnesota, excluding the terminals. Continuing the comparison further, the cost per mile of the right-of-way recently purchased is $6,991.87, which compares with the average value in Minnesota on Exhibit 9, excluding terminals, of $5,172.56.

Q. Now, let me ask you, Mr. Cooper, whether or not in your judgment this estimate of the presumed cost now of the Min-

nesota right-of-way as contained in your Exhibit 9, is moderate, when compared with the actual cost of this twenty-three and a third (approximately) miles of right-of-way, from Wadena to Glyndon.

A. Yes, sir, I think it is quite conservative.

Q. Did you pursue the same course with regard to all the properties that you have described, with regard to North Dakota and Minnesota, and the terminals here?

A. Yes, sir; as I have, I think, fully explained already, I checked myself in making up the valuation of the entire system for the Spokane rate case (which is substantially the valuation submitted in this case) by the purchases that we had made, and I took these various lines for which we had been buying right-of-way, made up averages per acre and per mile of actual cost, to see how they compared with the estimate that I was making; and as a result of all of that checking and of the figures shown on the last exhibit (Complainant's Exhibit 10), I am satisfied that my estimate is conservative. Were I to do the work all over again, I would increase it. I am satisfied, for instance, that my estimate at Spokane is too low; that our property could not be reproduced for the figures I have shown; but taking the valuation as a whole, my judgment is that it represents conservatively the cost of reproducing the property.

Q. At this time?

A. At this time. I should explain a practical difficulty in making an estimate of this character, which is that you will occasionally find a situation where the property is not reproducible. A striking instance of that is Tacoma. The Company owns the best part and the greater part of the property that can be made into railroad terminals, and that property has a strategic value because of that. That is to say, other railroad companies can come into Tacoma, as two of them are now doing, and they can establish terminals adequate to do the business, but it is physically impossible, no matter what expendi-

ture of money is made, for them to establish a terminal that will compare with the Northern Pacific's. They will always be at a disadvantage in their proximity to the business center and to the shippers, and they will always be at a disadvantage as to economy of operation.

Q. Does not that same fact appertain in Duluth and Seattle and some other cities?

A. It does at Duluth.

Q. Is it not an important factor in value there?

A. It is quite important in Duluth; and, in fact, along the whole line of the Northern Pacific Railway, being the pioneer line, you find this condition, that the towns have grown up on both sides of the Northern Pacific Railway. It is generally but a stone-throw from the depot to the business center. No other railway company can come into these towns and get such an advantageous location for securing business. But in preparing these estimates, that important strategic value which I speak of is not considered, because of the impossibility of measuring it in dollars and cents. And that is what I wish to point out, that there is this value in addition to what I have put down on this piece of paper, which I cannot measure, and no one else.

Q. It is also an important factor in Butte, as I remember it?

A. Very much so in Butte. We have lines running to all of the mines on the mountain side. Those lines were constructed, in many instances, before the mines were opened up, and our system of tracks on the Butte hillside where the mines are could not be duplicated at any expenditure. The mines in many cases have been opened and developed since the tracks were constructed and we are in their way, and they would be very glad to have us out of there, and we frequently, as a matter of accommodation to them, have to change our tracks so they can operate, and we also operate on the contracted ground available and the peculiar situation of a very steep mountain-

side, which makes it difficult for both parties; but our Butte property on the mountain leading to the mines could not be duplicated.

Q. Mr. Cooper, what elements do you consider in determining the cost to the Railway Company of right-of-way, for instance, which it is necessary for it to have?

A. I assume you mean what elements I consider in determining the price that we should pay for property?

Q. The price that you will have to pay, yes.

A. There is the value of the area taken; there is the severance damage, or the damage resulting to the area not taken by the severance; there are the improvements on the area taken; there is, also, the damage that there may be to improvements on the area not taken.

Q. The adjacent area of the same owner, you mean?

A. Yes. When we start to buy right-of-way, we size up and determine what we think is the full maximum agricultural value of the land, assuming that we are buying the right-of-way in a purely agricultural district; then each special case has to be considered from the standpoint of the damages of the character that I have indicated. The property is carefully examined and a report made, generally accompanied by a plat, showing the nature and location of the improvements and an estimate of the damage that we do to it. All of these estimates are made by us very liberally. We know from experience that we cannot hope to purchase right-of-way cheap, that the best we can hope for is to pay a good stiff value on everything, taken on a most liberal basis, therefore we don't waste time buying right-of-way in looking for bargains. When the right-of-way agent finds that he can't deal with the owner of the property on the liberal basis that I have indicated, he then reports the situation to me, and I generally take the opportunity of going over the written report and discussing it with the right-of-way agent, so that I get a clear understanding of the situation (assum-

ing that I do not know it personally); my rule then is to increase that price, or rather increase the offer; and the extent to which it is increased depends somewhat upon the circumstances. I have gone as high as twice what I was satisfied in my own mind was a good liberal price, and if the party will not accept this increased price, arrived at as I have indicated, we then reluctantly resort to condemnation. Our experience in condemnation is that we always get "stung" to use a modern, up-to-date phrase; the extent to which we are "stung" varies somewhat.

Q. How does it compare with the increased offer which you would be willing to make to a recalcitrant owner?

A. The rule is that after a condemnation proceeding is over I wish we hadn't condemned, I wish I had gone still higher; but there are occasionally cases where we run across a most pronounced "hog" who happens to be unpopular with his neighbors and we get off with perhaps one and one-half times the value. In condemnation cases you run across reasons that increase the award against you that you never dreamed of. You will find sentimental reasons that undoubtedly have influenced the jury—an old home, or associations, births, deaths and marriages, the woman will get on the stand and she will tell her story and weep over it, and every tear costs us money; therefore condemnations I dread, and I know—I think I am safe in saying that before we resort to condemnation we go just about double what the man ought to get for his property; and, of course keep in mind that I am not throwing the Company's money away, all of this is using my best judgment and experience to get the property for the Company as cheaply as possible.

Q. You make it a rule, I understand, to purchase the fee? You could condemn or purchase the easement,—why do you follow the practice of acquiring the fee?

A. We don't find that it makes any difference in the price we have to pay whether we get the fee title or an easement.

The owner recognizes that an easement to a railway company will, in all likelihood, be used perpetually and that it is making no real difference to him whether he gives us the fee or the easement. If objection is made to giving us the fee, we take the easement and pay him the same price.

Q. Whose judgment, whose estimates, do these figures on Ex. 9 represent, finally?

A. Mine.

Q. That is your own judgment, based upon your own knowledge and your own experience, as I understand it?

A. Yes, sir.

Q. Where does the Northern Pacific Railway Company obtain its coal?

A. The coal used east of the Missouri river is purchased, and consists of Pennsylvania, West Virginia and Illinois coals. From the Missouri river to Helena and Butte we use coal from our own mines at Red Lodge and Chestnut, Montana. In the district between Helena and Butte and Lester, in the state of Washington, we use coal from our own mines at Roslyn, Washington. Lester, I should explain, is at the foot of the mountain grade on the west side of the Cascade mountains.

Q. What is its distance from Helena, approximately?

A. 716 miles. West of Lester, on the entire system we use coal from our own mines at Ravensdale and Melmont, both located in western Washington. Therefore, the Company uses coal from its own mines for its entire system west of the Missouri river. Occasionally it has to purchase, in that district, coal from outside mines, due to difficulties in our own mines or an excessive amount of business requiring an excessive amount of fuel, such as we had last year, and such as, I regret to say, we have not got this year, and when that happens, as I say, we occasionally have to purchase coal in the district west of the Missouri river, from outside parties, to supplement our own product, our own production.

The MASTER: This mark is the point of crossing the Missouri river?

WITNESS: Yes, sir.

Q. You speak of this coal as produced from your own mines. In what Company is the title to those mines?

A. All of the operating coal properties which cover the mines that I have named are owned by the Northwestern Improvement Company, all of the capital stock of which company is owned by the Northern Pacific Railway Company.

Q. I think you said that you were auditor and assistant general manager of the Northern Pacific Coal Company at one time?

A. I occupied that position for about two years.

Q. Did that company at that time own these mines in question?

A. It owned the Roslyn mine only. The other mines have been acquired by the Northern Pacific since that time. I am now second vice-president of the Northwestern Improvement Company, and in that capacity have to do with its coal lands, both the lands connected with the mines in operation and the other coal lands which it owns.

Q. Have you any knowledge or experience, such as to justify you in forming an opinion, of the value of these operating coal mines and coal properties?

A. Yes, sir.

Q. How did you obtain that?

A. I had the experience with the Northern Pacific Coal Company which I have stated above, and there has been no coal property purchased by the Company since which I have not taken part in the negotiation of, because of my experience with the coal interests of the Company. There is very little of its coal business except the actual digging of the coal and hauling it to the surface of the ground that I am not consulted about. The purchase by the Company of the Red Lodge coal mine, of

the Chestnut coal property, of the Ravensdale coal property, the opening of the Melmont mine,—all of that I have had to do with, and I am quite familiar with that part of the Company's business.

Q. What is your judgment as to the present value of the coal lands which you have testified are now being operated for the use of the Northern Pacific system?

Mr. O'BRIEN: We desire to enter an objection to that as being incompetent and immaterial; the title to the lands is not held by the Northern Pacific.

Mr. HOW: Well, the title to the stock of the company that owns the lands is wholly held by them.

Mr. DURMENT: That is also subject to another objection, that the values of lands outside of Minnesota have nothing to do with this case.

A. Fifty million dollars.

Q. Do you think that the Northern Pacific Railway Company could purchase those coal lands, if they were owned by others, today, for fifty million dollars?

A. I very much doubt it. The Roslyn coal-field, in Washington, is peculiarly valuable to the Northern Pacific, or any other railroad in that country, from the fact that it is the only coal along the line of the Northern Pacific between the Cascade mountains and the Belt range of mountains.

Q. What distance does that include, approximately?

A. 785 miles. If the Company did not own the Roslyn mines, it would have to purchase its coal either in Wyoming or Canada for the district now supplied by the Roslyn mine. The Canadian coal would come from the Crow's Nest district. That coal is quoted at the mine today (I mean the Crow's Nest coal) at $2.15 per ton.

Q. Have you prepared a statement showing the estimated saving to the Northern Pacific Railway Company through the ownership and operation of those mines?

A. I [illegible].

Q. [illegible] that statement prepared, where was the data obtained? From the records of your Company, is what I am trying to get at.

A. Well, from the Company's records and my own personal knowledge.

Q. This coal exhibit, "Complainant's Exhibit 11—Cooper," contains many explanatory notes, besides certain figures showing an estimated saving to the Northern Pacific Company, through the operation of its own mines, of $2,770,184.92 per year. Under whose direction was this statement prepared?

A. The statement was prepared by myself and the figures are for the year 1907.

Q. Are these explanatory notes your own?

A. They are.

Q. Are they true and accurate?

A. Yes, sir.

Q. And all of them?

A. All of them, yes, sir.

Q. Are the figures, in your judgment, moderate and reasonable?

A. They are. In fact, it will be observed, on reading the exhibit, that I could, with entire fairness, have shown a much larger saving, resulting from the use of the Roslyn coal, than I have shown.

The MASTER: Why are you saving there?

WITNESS: This exhibit is made up to show the saving that results to the Company from owning its own mines, based on its consumption of coal and other conditions of the last year. To show this saving, I take in each case the price that the Company would have to pay for coal if it did not own its own mines.

Q. The current price?

A. The current price; and I have explained, in each case,

the coal that would have to be bought, where it would have to be bought, the price, and I have given the source of my information as to price and I have placed them on a parity as to freight conditions and worked it all out to show this saving. The largest part of the saving, it will be observed from the exhibit, is in the Roslyn field. I have partly explained why that saving is so large: it is because there is no other coal available as a substitute for Roslyn, except at a long distance from the Northern Pacific, either Wyoming or the Crow's Nest district, in Canada. All of that I have explained in the exhibit.

The MASTER: In making this statement, you have taken, to a greater or less extent, those conditions into consideration, I assume?

WITNESS: Yes, sir; and have explained all those conditions in the statement.

The MASTER: What you mean to say, then, is that you have been very moderate with reference to the estimates concerning the Roslyn mines?

WITNESS: I have been very moderate in showing the saving throughout, as to all the mines, particularly so as to the Roslyn. To illustrate: The present freight rate on Crow's Nest coal to Spokane is $3 per ton. The line over which it would have to be transported is not owned by the Northern Pacific. I have, in making up this exhibit, assumed that because of the large quantity of coal that the Northern Pacific would get from the Crow's Nest district, if it did not own the Roslyn field, it would secure a reduction of a dollar per ton from that established freight rate and have made my figures as to saving not on the basis of the freight rate which exists today of $3 per ton, but on an assumed freight rate we might have had of $2 per ton.

By Mr. O'BRIEN:

Q. Do these mines that are owned by the Northwestern Improvement Company sell coal to other persons besides the

Northern Pacific road?

A. Yes, sir. The exhibit shows that in the year 1907 15% of the output of those mines was sold to outside parties, the Northern Pacific Company using, itself, the other 85%. I will further explain that, under the new United States law, which went into effect May 1st, we cannot sell any of the production of these mines outside of the state in which the mine is operated; therefore, for that reason, and for the additional reason that our mines are not wholly adequate to take care of ourselves, we have been trying to get out of the commercial business entirely, but there have not, thus far, been enough of the mines opened up and developed, outside of those which the Company owns, to take care of the demand, and we have been obliged, in order that the public should not suffer or have to pay extraordinary prices, to get fuel from a long distance, to continue selling a small amount, which we are trying to reduce as fast as we can; in other words, we have adopted the policy of getting out of the commercial business entirely and are getting to that state as fast as we can, having regard for the fact that someone must furnish fuel for those people until enough of the mines are opened up to take care of them.

Q. Is there any difference in the price at which the coal for commercial purposes was sold at the mines and the price at which it was purchased by the Northern Pacific Railway Company?

A. Yes, sir. We get a higher price for the coal sold to outsiders than we charge ourselves.

Recess until 2 P. M.

AFTERNOON SESSION.

By Mr. How:

Q. Have you obtained information from your records with

regard to the commercial sale of coal by the Northwestern Improvement Company?

A. Yes, sir. I have the information as to the amount of those sales for the ten months ending April 30, 1908.

Q. Will you state what price has been charged for the coal commercially sold?

A. The average price of the commercial sales for that period are $2.6532.

Q. And what during that time has been the price charged against the Northern Pacific Company?

A. $1.9775.

Q. How much coal does the Northern Pacific Company use, in the aggregate, how much did it use in the year 1907?

A. The amount of coal consumed by the Northern Pacific Railway Company in the year 1907 was 3,168,005 tons; of which 60% was from its own mines and 40% was purchased.

Q. Referring to your first exhibit (which I think is Complainant's Exhibit 8), are you willing to produce, upon demand, anybody who assisted you in the compilation of this schedule of property purchased by you, or under your supervision, from December 1, 1904, to May 31, 1908?

A. Yes, sir.

Q. Are you willing to permit any representative of the defendants, or any of them, to examine the records, if any, that were used in making this compilation?

A. Yes, sir.

Q. At any reasonable time?

A. Yes, sir.

Mr. HOW: I offer in evidence Complainant's Exhibit 8.

Mr. O'BRIEN: That is objected to as incompetent and immaterial.

The MASTER: The objection will be noted.

Q. I call your attention to Exhibit 9, which is your statement of valuation. I did not ask you before, I ask you now,

if that is your own judgment, and best judgment, as to the reasonable valuation, as detailed in that statement, of the right-of-way and other operating property owned by the Northern Pacific Railway Company as stated therein.

A. It is.

Q. I ask you whether or not the statements in these notes appended are true, to the best of your knowledge and belief.

A. They are.

Q. I ask you whether or not that is true, also, with regard to each state recapitulation.

A. It is.

Q. Will you, upon request, produce anybody for examination who has assisted you in making that compilation and estimate?

A. I will.

Q. Will you, upon request, at any time permit the defendants, or any of them, or any representative designated by them, to examine any records which assisted you to make that compilation?

A. I will.

Mr. HOW: I offer in evidence Complainant's Exhibit 9.

Mr. O'BRIEN: Objected to as incompetent, irrelevant and immaterial.

The MASTER: Objection noted.

Q. I call your attention to Complainant's Exhibit 10, being the statement showing the actual cost of right-of-way purchased in the years 1905 to 1908, inclusive, for line changes and new lines, as described. I ask you if that is an accurate statement from the records of your office.

A. It is.

Q. Will you produce, upon demand, anybody for examination who has assisted you in making that compilation?

A. I will.

Q. Will you permit the defendants or any of them, or any

representative designated by them, to examine any records which you have, which have assisted in making that statement?

A. I will.

Mr. HOW: I offer Complainant's Exhibit 10 in evidence.

Mr. O'BRIEN: Objected to as incompetent, irrelevant and immaterial.

The MASTER: Objection noted.

Q. Referring to Exhibit No. 11, being the coal exhibit, that contains a large amount of descriptive matter. I think you have testified that the statements there in the way of description and explanation, are true?

A. Yes, sir.

Q. Are the figures contained in that exhibit accurate and reasonable?

A. They are.

Q. Will you produce, for examination, anybody who has assisted you in making up that statement?

A. I will.

Q. Will you permit the defendants, or any representative designated by them, or any of them, to examine any records of your Company which have assisted in making that compilation and statement?

A. I will.

Mr. HOW: I offer Complainant's Exhibit 11 in evidence.

Mr. O'BRIEN: Objected to as incompetent, irrelevant and immaterial.

Q. Referring to Complainant's Exhibit 9, your estimate of valuation, I see that you place the aggregate miles of main track at 5,997.35, while Mr. Darling's Exhibit No. 2 gives the mileage of the Northern Pacific system at 5,176.12 miles. Will you explain the difference between Mr. Darling's statement and yours with regard to that mileage?

A. In my statement is included the mileage of all of the right-of-way that is included in the area and valuation. That

means that there are some lines not yet constructed on which we have purchased the right-of-way. I have included them in my statement, but the railroad not having been constructed, Mr. Darling omitted them from his (very properly), but I had to include them in mine in order to get a proper divisor to find the proper rate per mile and per acre.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. I call your attention to Complainant's Exhibit 8, Mr. Cooper. This purports to be a schedule of lands purchased by you for the Northern Pacific Railway Company from December 1, 1904 to May 31, 1908. I notice the first item is St. Paul, Minnesota, additional terminal property, cost $353,526.69, I believe. Does that represent the money actually paid by the Northern Pacific Railway Company as the purchase price of that property?

A. There is included in that the expenses of purchasing the property, such as commissions paid to parties who negotiated the purchases, the examination of titles, abstracts of titles, and expenses of that character; so that in addition to the actual purchase-price paid, there are the expenses of that character.

Q. Then the examinations of title to the property purchased, were not made by the legal department of the road?

A. As a rule they are; but with this St. Paul property, our legal department was too busy, and we employed Mr. George E. Budd to examine some of them, and Mr. Tiffany examined some of them.

Q. In whose name were the titles to these properties taken?

A. They were taken originally in the name of several different individuals, and also in the name of the Northwestern Improvement Company. The title was taken in the name of those individuals to conceal the connection of the Railway Company with the purchases. Later those individuals, who had

no real interest in the transaction, conveyed to the Northwestern Improvement Company, and some of the titles were taken, after we were discovered, direct in the Northwestern Improvement Company. That put all of the titles into the Northwestern Improvement Company. Subsequently the Northwestern Improvement Company conveyed all of the property to the Northern Pacific Railway Company.

Q. When did they convey to the Northern Pacific Railway Company these properties?

A. My recollection is, it was about the end of last year or the beginning of this year. It was not very long ago, but I don't remember the exact date.

Q. Will you get the date and give it to the Reporter?

A. Yes.

Q. Was any advance upon the price which was paid for the conveyance to the Northwestern Improvement Company paid to it by the Northern Pacific when the transfer was made to the Northern Pacific?

A. The consideration paid by the Northern Pacific Railway Company to the Improvement Company was the purchase price, the expenses of the character I have indicated, taxes which the Improvement Company had paid on the property, plus interest on all the expenditures that the Improvement Company had made from the date they were made to the date of the sale to it, at the rate of six per cent, I think; I am not positive as to the rate of interest.

Q. But nothing additional to what you have mentioned?

A. Nothing additional.

Q. In the cases where the property was taken in the name of individuals and then transferred by the individuals to the Northwestern Improvement Company, was there any advance paid by the Improvement Company to those individuals over what had been originally paid for the property?

A. No advance. These individuals simply acted as "dum-

mies," at our request, got no compensation for doing so, in any way.

Q. Was the true consideration for the purchase in the case of each contract or parcel included in this item, "St. Paul, Minn., terminal property" stated in the deed of conveyance?

A. My recollection is that some of the deeds had a nominal consideration, some of them the true consideration; but wherever the consideration was not given as nominal it was the actual consideration which the Company actually paid. There was one case, (perhaps you may have that in mind) where the Company was swindled by an agent that it employed, who purchased the property for twelve thousand dollars and turned it over to us at twenty, which I discovered some time afterwards, but we paid the twenty all right.

Q. Did you ever get back the eight?

A. And we never got back the eight.

Q. The total figure given here as the cost of this item was $353,526.69. Can you state how much of that is made up of interest on the purchase price actually paid to persons from whom you took the property, and how much is cost of acquiring it, and how much is the amount actually paid to the persons from whom it was originally bought?

A. I have not that information with me, but it is readily obtainable in my office and I will be glad to get it and bring it at the next session.

Q. If you please. What part, if any, of this additional terminal property purchased in St. Paul during this period is now actually used for railroad purposes?

A. None of the property that we have been considering at St. Paul represented by the $353,526.69 is now in use for railroad purposes, or for any purpose.

Q. A large part of this property purchased and included in this item was purchased at about the time the Soo railroad was endeavoring, or it was supposed would endeavor, to get a

right-of-way into the city through the section where you bought this land, was it not?

A. No, my recollection is that the Soo had about finished buying before we began. We commenced purchasing that property early in 1905, and it took us about two years to acquire it; and while I am not sure, my recollection is the Soo had about got through before we began.

Q. Well, the Soo had not at that time acquired a right-of-way into the city through that portion or near where you purchased this property, had it?

A. The property we have been discussing is not anywhere near the property acquired by the Soo, or near any property which the Soo sought to acquire. I fear, as the record now stands, that I have created the impression that this item of $353,526.69 covers the property only between the St. Paul & Duluth freight yard and Commercial street, in St. Paul. That is not so. It includes, also, some property which we purchased, lying between the lines of the Northern Pacific and the Great Northern at St. Anthony Park. I grouped them all together as additional terminal property at St. Paul, they all being within the corporate limits of St. Paul. I do not recall, at this moment, the price paid for the property at St. Anthony Park.

Q. The price per acre was what, for the St. Anthony Park property?

A. My recollection is $1,000 per acre.

Q. It was commonly supposed about town, for some time during the periods covered by this statement here, that the Northern Pacific Railway purchased a considerable property in the neighborhood of Eighth Street or Seventh Street, in the city of St. Paul, and west of all the roads as they come in down the Trout Brook valley, to the Union station, property in Kittson's addition. Is any of that included in this list Exhibit 8?

A. We purchased no property in the district referred to in your question since I have been Land Commissioner, but you

may refer to a trade that we made with the Soo under which we conveyed to them some property that we had owned for a considerable time, some property that we had recently acquired, in exchange for some property that they had recently acquired. That trade was agreed upon before I was made Land Commissioner, but consummated by the exchange of deeds since.

Q. Is any of that property included in this additional terminal property which is scheduled as costing $353,526.69?

A. No, sir.

Q. Does that appear in this schedule, Exhibit 8, at all?

A. No, sir.

Q. This St. Paul property was purchased, most of it, in 1904 and 1905?

A. In 1905 and 1906.

Q. Is any of it improved at the present time?

A. No improvements on any of the property purchased. There were some old shacks on there when we acquired them, that we have since had removed.

Q. The next item we find here is right-of-way for new passenger line in Minneapolis, ten miles, $169,811.41. Where is that right-of-way located?

A. For fear that the counsel may not understand about the ten miles, that refers to the distance that the property is from St. Paul, has no reference whatever to the length of the right-of-way. It was simply to identify its location. The right-of-way in question starts at the union depot in Minneapolis, crosses the river diagonally across Boom Island, on which the Wisconsin Central terminals are located, reaches the main land and runs directly to a connection with our existing lines at a point which I cannot identify without a map. The total length of this line I estimate at a half mile running through a residence and second or third-class business district in Minneapolis. The purpose of the line is to give us a more direct line for our passenger trains, avoiding their going

through our local freight yard, in a somewhat round-about manner. The right-of-way has not yet all been purchased for this new line; perhaps one-half of it so far as money value is concerned, but more than a half so far as length of line is concerned.

Q. Then this item here of $169, 811.41 is about half what has actually been paid and the other half estimated what the remainder will cost?

A. No; I evidently did not make myself clear. This statement represents nothing but actual money spent; and when I said that we had about half of it acquired I did not mean that any of the half not acquired was in here at all. This is the actual cost of what I estimate to be the half that has been acquired.

Q. Then is that used at the present time for railway purposes, any part of that?

A. No, sir; it is in process of being acquired, preliminary to the commencement of construction of the line.

Q. Is it to take the place of another line or a part of the line that is now constructed that you want to acquire this right-of-way?

A. It is to give us a shorter and more direct passenger line, through the town of Minneapolis, than we now have.

Q. But when you acquire this new right-of-way for the new passenger line, will you abandon or cease to use any of the tracks or roadways which you now use for railroad purposes?

A. Oh, no, not at all.

Q. Was the property which you have acquired for this right-of-way for new passenger line in Minneapolis, Minnesota, acquired from individual owners other than railroad corporations, or was any of it acquired from other railroad companies?

A. All purchases from private individuals excepting the purchase of a school property from the city.

Q. Was this taken in the name of the corporation, or in the

name of the Northwestern Improvement Company?

A. We originally took title in the name of individuals, while we were trying to conceal our purpose in buying the property. Those individuals then conveyed to the Northwestern Improvement Company, and that Company, in turn, conveyed to the Northern Pacific Railway Company.

Q. You don't remember about when?

A. Within six months.

Q. Was the consideration which you paid the Northwestern Improvement Company the actual amount which was paid to the persons who originally conveyed the property, or if there was anything additional added, what and why?

A. The consideration paid by the Railway Company to the Improvement Company was the actual amounts paid to the different parties from whom the property was purchased, and in addition the expenses, such as commissions, examination of titles, taxes paid by the Improvement Company, plus interest on all of the various expenditures from the date they were made to the date of the transfer between the two companies, the rate of interest I think being six per cent.

Q. I suppose the true consideration was mentioned in the deeds of conveyance made by the original owners except where it was stated as a nominal consideration?

A. That is right.

Q. Now, this additional terminal property in Minneapolis, the third item on this schedule, where is that located?

A. That is located in Northeast Minneapolis, adjoining property that the Company has owned for quite a number of years. I am not sufficiently familiar with the names of streets in Minneapolis to locate myself without a map.

Q. This property adjoining the additional terminal property mentioned in this schedule, and which the Northern Pacific had owned for a number of years, is that at present used for railroad purposes?

A. There are some tracks on it, but the piece of ground was so shaped that the Company could not use it to advantage for a railroad yard without purchasing some additional, and it was this some additional that this property was purchased for. It was a purchase made in anticipation of future requirements. The idea was that we would there establish a grain-storage yard on which the cars coming into Minneapolis elevators would be placed when they came in off the road awaiting inspection, and from that yard would then be distributed to the mills and the elevators or the other railroads, wherever they had to go, and such a yard as that we had reached the point that we felt it necessary to provide.

Q. Have you begun to use it for that purpose as yet?

A. I think not.

Q. No improvements have been made upon that property since you purchased it, as yet?

A. No, sir.

Q. I suppose the purchase of this was made in the same way as in other cases, to private individuals and then to the Northwestern Improvement Company, and then to the Railroad Company?

A. That is true, excepting that I think we made some recent purchases (the last purchases made) in which we took the title direct either in the Improvement Company or the Railway Company, it having become known that we were doing this buying and there was no necessity for further concealment.

Q. I suppose in this case, as in the two prior items, the amount paid the Improvement Company included the expenses and interest at six per cent as well as the actual amount paid the party from whom you purchased?

A. Yes, sir.

Q. And the taxes?

A. Yes, sir; excepting that I am not positive about that rate of interest; I think it was six per cent.

Q. It would not be more than six, would it?

A. No, sir.

Q. Now, I call your attention to the additional station grounds at St. Cloud, $2,602.50. Was that for property purchased from private owners for use at St. Cloud?

A. Yes, sir.

Q. Was it adjacent to the right-of-way?

A. Yes, sir.

Q. And is it now in use for station purposes?

A. I could not answer as to that.

Q. Was it separated from the right-of-way by any public street?

A. My recollection is that the tract of ground that we are talking about lies within the legs of the wye at St. Cloud. I cannot recall about the public street. There was a public street, but I thought it ran in the opposite direction from what it would run to make the separation as you suggest, but I am not positive about that now. It has been several years since we made that purchase.

Q. And you don't know whether it is now being used for station grounds or not?

A. I do not know as to that.

Q. And do you now know the necessity for acquiring it for station grounds?

A. I recall, at the time that I received the instructions that the file of correspondence sent me showed it had been considered by the operating officers of the Company who had recommended its acquirement to the president pointing out its convenience in operation and advisability of buying it, and that file of correspondence was sent to me with instructions by the president to purchase it. Personally I did not pass upon the question of its necessity.

Q. And you don't know the extent of it, or do you, whether it is a half acre or acre?

A. There was quite a chunk of it, but I do not recall the acreage.

Q. This terminal property in Superior, Wisconsin, $160,220.05, I suppose that was purchased in the same way, substantially as these other terminal properties, in the names of individuals, or in the name of the Northwestern Improvement Company, or was it purchased in the name of the road direct?

A. No, the title was taken in the name of individuals and by them transferred to the Improvement Company, and by the Improvement Company to the Railway Company.

Q. And in that case, as in the other cases, you paid the Improvement Company not only the purchase price paid the former owner, but the expense of acquiring the property, and the taxes and interest up to the time you made the purchases?

A. That is right.

Q. And that additional terminal property in Superior, Wisconsin, is any of that, up to the present time, being used for railroad purposes?

A. Yes, sir.

Q. Most of it?

A. I should estimate that in value about one-half of it is actually being used now.

Q. Is the rest of it adjacent to that which is being used?

A. No; the item includes a strip of ground three miles long by a thousand feet wide, lying between the rights-of-way of the Northern Pacific and the Great Northern, extending from South Superior to West Superior, and that property has been purchased jointly by the Northern Pacific and Great Northern, and that property is included in this item with other properties at Superior in an entirely different part of the town of Superior, and that item includes the property acquired for a new yard that we have constructed on the bay front at Superior. That is actually in use. This property that I speak of, that

was acquired jointly by the Great Northern and Northern Pacific, a small part of that only is in use by the Great Northern.

Q. But none of it is in use by the N. P.?

A. Not yet.

Q. Now, does this $160,220.05 represent the cost of that entire three miles, one thousand feet wide, or only the Northern Pacific's share of it?

A. Perhaps I should explain that this exhibit we are reading is not intended to show only property acquired by the Northern Pacific Railway Company, it is intended to show all property that I have purchased for any Company, showing my qualifications to speak advisedly on valuations; therefore, it includes that particular property that I speak of purchased jointly for the Great Northern and Northern Pacific, and there are other items that we will come to later purchased for other companies, but it is all property that I purchased.

Q. Then, because it appears upon this Exhibit 8, it does not follow that it is property belonging to the Northern Pacific Railway Company?

A. Not at all; not at all.

Q. Well, any of these prior items we have mentioned in the schedule here, do they include property purchased for others than the Northern Pacific?

A. No; this is the first item that we have come to where a part of the property was for another company.

Q. Was this property purchased in Superior, Wisconsin, purchased in the same manner as the other additional terminal properties, through individuals to the Northwestern Improvement Company and from them to the road?

A. Yes, sir.

Q. And of course the N. P. didn't pay this entire $160,220.05 to the Northwestern Improvement Company?

A. No, sir; the Great Northern paid a part of it.

Q. But when that was paid, that included the original pur-

chase price paid the former owner as well as the expense and interest and taxes?

A. That is right.

Q. I notice here an item, "Crow Wing County, Iron Ore Property, $77,773.75." What is that?

A. That is property purchased by the Northwestern Improvement Company in Crow Wing county, Minnesota.

Q. For the Northern Pacific Railway Company?

A. For itself.

Q. That, then, was not turned over to the Northern Pacific Railway Company?

A. No, sir.

Q. I suppose, from what you have said here as to particular instances, that the Northwestern Improvement Company is a Company through which the Northern Pacific Railway Company makes many of its purchases of lands for railroad purposes?

A. It has made quite a number of purchases in the past three or four years, but not by any means all that the railroad company purchases.

Q. Well, in those cases where it has purchased through the Northwestern Improvement Company, as in the cases you have already testified to specifically, the same course has been followed, has it? they have paid the original cost price, with the expenses, taxes and interest, but have they paid a bonus, in addition to that, to the Northwestern Improvement Company?

A. There has never been any bonus paid. The Improvement Company simply was reimbursed the actual money that it had expended in acquiring the property, plus interest.

The MASTER: That company, the Northwestern Improvement company, is the Railway Company, isn't it, practically, and its purchases and operations are generally for the benefit of the Railway Company?

WITNESS: That is exactly correct. All of the capital stock

of the Northwestern Improvement Company is owned directly by the Railway Company.

Mr. HOW: It uses its own funds to make these purchases, when you charge interest against them?

WITNESS: Yes, that is right.

Q. That is, uses the Improvement Company's funds, you mean?

A. Yes, the Improvement Company pays its money for these purchases, and is then reimbursed by the Railway Company, with interest.

Mr. HOW: No fee for services at all?

WITNESS: No fee for services.

Q. Now, will you, starting from the iron ore property item I called your attention to, indicate what other items in this Exhibit 8 were purchased through the Northwestern Improvement Company for the Northern Pacific, and in case the title to any of them is yet in the Improvement Company, indicate that fact.

A. A part of the item reading "Dilworth, Minnesota, new terminal yard and townsite" is in the Improvement Company, being the townsite portion. The title to the remainder is in the Railway Company and the property is used for railroad purposes.

Q. It was all purchased, I suppose, through the Northwestern Improvement Company.

A. I am not sure as to that. My recollection is that we purchased the portion which we knew would be used for the large terminal yard that we have constructed there and took title direct in the Railway Company, and that we knew then the portion that we were going to use for townsite purposes and took that direct in the Improvement Company, but I am not positive as to that.

Q. Well, with reference to that, was this townsite and

these terminal yards originally a part of the land grant of the Northern Pacific?

A. If so, it had been sold by the Company. I rather think part of the land is in an odd-numbered section that the Company may originally have had as a part of its land grant, but it had sold it all and it all had to be bought from private owners. The next item after Dilworth in which the Improvement Company has been interested is that of Mandan, additional terminal property $9,379.19. That property was purchased by the Improvement Company, and by it conveyed to the Railway Company on the same basis as we have explained with other purchases, to wit, cost, expenses, taxes and interest.

Q. Is it now used for railroad purposes?

A. Not yet. It is a small piece of property to fill out the end of our yard, and we have a few lots yet to acquire before we can make use of it. With the exception of the items that we have explained, in which the Improvement Company is interested, all of the items on the exhibit are Northern Pacific Railway items until we come to the item "Missouri River Branches, North Dakota." The Missouri River Railway Company has been incorporated by the Northern Pacific to construct two lines in North Dakota, one from Mandan south to the north line of South Dakota, the other from Mandan north, following the Missouri river around to the Yellowstone and down the Yellowstone to Glendive. We have only recently commenced buying the right-of-way for these lines, and that item of $25,143.38 represents the money we have spent so far in buying this right-of-way. The Improvement Company has nothing to do with that, but all titles are taken in the name of this Company I have spoken of, the Missouri River Railway Company.

Q. That is a separate and distinct corporation?

A. Entirely separate from the Northern Pacific, but capital stock all owned by the Northern Pacific. Continuing the items on the exhibit, all items between the one last discussed and the

item "Turah, Montana," are Northern Pacific Railway Company property, purchased by it direct, without any intermediary.

Q. Do the figures which you have entered here as the cost of the items you say are Northern Pacific items purchased direct, represent the actual price paid to the persons from whom the property was purchased?

A. Plus any expense in making the purchase, but no interest nor taxes. In our method of keeping our accounts we charge for the item itself any expense connected with the acquiring of the property, such as buying an abstract of title, recording the deeds, etc.

Q. You do not, however, apportion to that property any part of the salaries paid regular employes of the road, do you?

A. Yes, sir. My office pay-roll and my field office pay-roll is distributed to all of the work that we have done during the month, as nearly as we can distribute it, and on some items, such as "Garrison to Missoula, Montana, right-of-way for line changes" we had an employe, for perhaps five or six months, doing nothing else but working there, and all of his time and expenses go into that, and then a portion also of my office pay-roll.

Q. Well, for instance, would there be any portion of your salary charged in as the cost of purchasing any of these properties?

A. Yes, sir.

The MASTER: That is true of all these items?

WITNESS: That is true of all the items, yes, sir.

Q. Now, you may proceed.

A. The item "Turah, Montana" represents some property that we have decided to purchase there, anticipating that we will change our division terminal from Missoula, Montana, to this point some time in the future. The property was purchased by the Improvement Company and has not yet been

transferred to the Railway Company, and the amount that you see on the exhibit represents exactly the expenditures that the Improvement Company has made on the property so far.

Q. If the plan contemplated shall be carried out, would it result in the abandonment of the properties at Missoula which are now used for yard purposes?

A. No; we cannot acquire the property that we need to expand our terminals at Missoula within the limits of reasonable price; also, there is the embarrassment that we are running against at all of these towns, as they keep growing larger and larger, where we have terminals, such as Missoula, Fargo, Billings, of street crossings, the towns have grown so large now, with our big yards right in the heart of them, abutting on the business district, we are forced to either provide innumerable crossings, at a great deal of expense, or move out, and in some cases we are moving out. That applies to Fargo, where we are moving to Dilworth; that applies to Billings, where we are moving to Laurel; that applies to Missoula, where we contemplate moving to Turah. Also another reason for changing our terminals is the new sixteen-hour law; the long runs, that make long time between the terminals necessary, being prohibited by this new law, we are forced now to put our terminals closer, which is still another reason why we are making some of these changes. The next item in which any one other than the Northern Pacific Railway is interested is Paradise, Montana. There the situation is precisely similar to that at Dilworth. We purchased considerable property there for a new terminal yard, also for a townsite. The Improvement Company made all of the purchases in the first place, and has conveyed to the Railway Company the portion that is to be devoted to railway purposes, retaining the portion that is to be devoted to townsite purposes in its own name. The Railway Company has paid the Improvement Company the cost of the portion conveyed to it on the same basis as all of the others, that is to say,

actual cost plus expenses, taxes and interest. The three next items following Paradise were all purchased by the Railway Company direct. The item, "Spokane, Washington, additional terminal property, $97,737.54"—a portion of that item, about $3,500—was property purchased by the Improvement Company, afterwards transferred to the Railway Company on the same basis as has been explained with other items, to wit, cost, expenses, taxes and interest, and the property is in use for railroad purposes. The next two items, Palouse branch and Lewiston, are purchases made by the Northern Pacific Railway Company direct.

Q. As to the Lewiston item, are those station grounds in use for railroad purposes at this time?

A. They are being at this moment put to use; the new yard is being constructed there now. The item, Culdesac to Grangeville, is a branch line between the two points named, which is owned by the Clearwater Short Line Railway Company, a company which is owned entirely by the Northern Pacific Railway Company. The title was taken direct in the name of the Clearwater Short Line Railway Company, and the money on the exhibit is the exact amount charged to that item, representing the cost of the property and the cost of acquiring it, but no interest. The next four items on the exhibit, "Spokane to Pasco, Texas Ferry Branch, Kennewick to Vancouver, Vancouver to Portland" are all lines owned by the Spokane, Portland & Seattle Railroad Company, in which company the Northern Pacific owns fifty per cent interest, and the Great Northern Railway fifty per cent interest.

Q. I suppose the title stands in the name of that company?

A. And the title was all taken in the name of the Spokane, Portland & Seattle Railroad Company, which company paid the money direct for the property. The following item "Portland, Oregon" represents property purchased by the Northwestern Improvement Company, a portion of which was sub-

sequently sold to the Spokane, Portland and Seattle Railway Company, and the remainder it now owns. None of that property has ever been conveyed to the Northern Pacific Railway Company. The following item, "Vancouver, Washington," represents property of the Spokane, Portland & Seattle Railway Company, the same as the other properties of that company that I have explained. The next two items, "Vancouver to Kalama" and "Kalama to Centralia" are Northern Pacific Railway property. The next item "Kelso to Gray's Bay, Washington" represents actual expenditures for right-of-way for a line, the construction of which is contemplated by the Gray's Harbor & Columbia River Railway Company, a company all of the capital stock of which is owned by the Northern Pacific Railway Company. The item "Tacoma, Washington, additional station grounds" represents property which the Improvement Company purchased and has since transferred to the Railway Company on the same general basis as has been explained, to-wit, cost plus expenses, taxes and interest.

Q. Is that item now in use for additional railway purposes?

A. We are trying to get a franchise from the city of Tacoma, and have been, now, for six months, to enable us to go ahead with the re-arrangement of our passenger yard there and put up a new station, and this property is all needed to carry out that plan. The next two items, "Tacoma, Wash.," and "Seattle, Wash.," are Northern Pacific property purchased direct. The next item "Seattle, Washington, right-of-way for new line," covers some property being purchased for the Railway Company by the Improvement Company, will be transferred after we complete the purchase of all of it, but has not yet been transferred. The next item "Snohomish" is property purchased direct by the Northern Pacific Railway Company. The next item "Bellingham," is property that was purchased by the Improvement Company on the same basis as we have explained, afterwards transferred to the Railway Company at

cost plus expenses, taxes and interest. The next two items (the last two on the exhibit) are purchases made direct by the Northern Pacific Railway Company.

Q. You have said that certain portions of your office payroll, including your salary, were distributed and charged to these various items or to a number of these items we have spoken of here?

A. Yes, sir.

Q. Is there any basis upon which those divisions or distributions are made showing what portion of these salaries and expenses are charged to these particular items and what portions are charged to the general operating expenses or office expenses?

A. The distribution is made each month by my chief clerk and submitted to me. He knowing the business as it is going through the office from day to day, the amount of work that is entailed in handling it, is qualified to make this distribution, which is then submitted to me, and I have to sign it; then it goes to the Comptroller, who then makes the distribution to the different accounts. That is done through my office, and, similarly, my assistant on the west end does the same for his office. They all have to be passed upon by myself and approved, the rule being that new property purchased will be charged to capital account, and that account should stand charged with everything, that is, all expense that there has been in getting it, it having no connection with the operation of the railroad; but a great deal of the work of my office is handling the leasing; that is all charged into the general expenses of the Company.

Q. How long has that system of distribution been in force?

A. From the beginning.

Q. From the beginning of your connection with it, continually?

A. Oh, yes; I never heard of any other system excepting that.

Q. Then, the expense of your office, for instance, including your assistant at the west end of the line as well as here, is distributed each month?

A. Yes, sir.

Q. A portion of it goes to the general expenses and a portion of it to these particular items of which you speak as capital account?

A. Yes, sir.

Q. Now, while we are at it, you speak here that a good deal of your work is with reference to leasing property. What do you mean by that? What property is leased?

A. We lease portions of the right-of-way along the entire line for various purposes, principally commercial and industrial purposes that require side-track facilities, and that property is leased to these parties who pay a rental therefor; that rental is credited in to the miscellaneous earnings of the Company.

Q. And, as I understand it, from your testimony this morning, those rentals ordinarily are based upon a return to the Company of six per cent interest upon the valve of the property?

A. I am sorry to say that that is more of a theory than a fact. That is the theory on which we proceed to try and collect rentals, that we will get six per cent.

Q. Now, it appears from your testimony here, that the Improvement Company was controlled by the Northern Pacific Company; at least, as I understood you to say, the Northern Pacific Company owns all of the stock of the Northwestern Improvement Company?

A. That is correct.

Q. Is it not true that all the stock of the Northwestern Improvement Company was issued to the Northern Pacific Company or for its use, in exchange for the land-grant, or a portion of the land-grant of the Northern Pacific Company?

A. I do not know. I had no connection with the Improvement Company until 1904 and was not in St. Paul at the time that it was organized.

Q. You are one of the general officers of the Northwestern Improvement Company?

A. I am second vice-president.

Q. And you have been an officer of it for how long? Not in that particular office necessarily, but an officer of it.

A. I was made land commissioner of it April 1, 1904; later made second vice president.

Q. And the officers of that company are generally also officers of the Northern Pacific Company, are they not?

A. Yes, sir, excepting the general manager of the coal department and some of his subordinates.

Q. Do you know the amount of the capital stock of the Northwestern Improvement Company?

A. I do not.

Q. The employes of the Improvement Company generally are also employes of the Northern Pacific Company, are they not?

A. The Improvement Company employes, excepting a few officials and clerks, are its coal-mining men, who are exclusively Improvement Company employes. The employes of the comptroller's office are exclusively Improvement Company employes, the same treasurer serves both companies, and his clerks, the same land commissioner and the same president.

Q. And the same secretary?

A. The same secretary.

Q. And the clerks of these various officials of the Northern Pacific also serve the Improvement Company, I suppose?

A. That is true always excepting the coal mining department, which is exclusively the Improvement Company.

Q. And the comptroller's department?

A. No, we have two distinct comptrollers; the Northwest-

ern Improvement Company has its own comptroller and his own office force, and his office is located in Tacoma; the Comptroller of the Northern Pacific is located in St. Paul, and is a different man.

Q. I suppose that the Northwestern Improvement Company is conducted as an ordinary corporation and pays dividends on its stock when it earns them the same as the other?

A. I do not know anything about the dividend part of it; I have no connection with the financial features of the company and really don't know.

Q. You are one of the directors, are you not?

A. Yes, I am a director, but I do not recall any meeting at which there has been a dividend declared.

Q. And do you know whether the company has ever made any money or whether it has lost money?

A. I do not know.

Q. In the case of yourself, or of any of the other officers, who are also officers of the Improvement Company and the Northern Pacific Company, are separate salaries paid by each to them, or one salary, and is that afterwards apportioned between the two, or how is that arranged?

A. One salary. The Company has an absolute rule that any of its officers, serving in two capacities or in two companies, shall be carried on one payroll only, and then his salary is distributed and charged between the different companies.

Q. In the case of the Northwestern Improvement Company, I suppose the officers who are officers in both companies, and the employes who are employes in both companies, are carried on the payrolls of the Northern Pacific and then the distribution is made between the Northern Pacific and the Northwestern Improvement Company?

A. Yes, sir. That can be illustrated by my own case, I am carried on the payroll of the Northern Pacific, and my recollection is that one-third of my salary is charged to the Improve-

ment Company. You see I handle quite an extensive amount of land interests of the Improvement Company independent of these coal lands we talk about, it has quite extensive land interests. I am not sure about the distribution now, but I think it is one-third.

Q. On this schedule, Exhibit 8, is it not true that in a number of these items for right-of-way of new lines, the cost specified here includes the value of right-of-way for lines which are not yet in use but are yet to be constructed?

A. There are some items of that kind on that schedule, yes.

Q. Will you point out, briefly, which ones?

A. On page 2, "Missouri River Branches, $25,143.38;" on page three, "Kelso to Gray's Bay, $247,462.69." Construction on those two lines has not yet been commenced, but it has on all of the other items where it speaks of right-of-way, shown on the exhibit, either commenced or finished.

Q. I see a number of items here "Reservoirs." Those are for the Northern Pacific properties, for these branch lines or the lines constructed by subsidiary companies?

A. All Northern Pacific.

Q. And all for storing water for use for railroad purposes?

A. Locomotive use.

Q. These figures here of the cost include only the cost of acquiring the land for them, does it, or does it include the cost of constructing the reservoirs, too?

A. Oh, no, only the land and such expenses as I speak of—abstract of title, perhaps, recording deed—very small expenses.

Q. I notice one of them costs more than $19,000; the others run from $800 to $1,000 and $3,000; why the difference?

A. The expensive one you speak of, at Oriska, North Dakota—we had to purchase quite an area of ground to get a basin that we wanted to make the reservoir of and it was highly improved land, and that is all the story. We were not unreasonably held up on those purchases. We are now threatened with

a law-suit on account of the damage our reservoir has done, but that is another story that may come in later, but on those reservoirs we have not experienced any serious difficulty. We have had to condemn some but we did not condemn at Oriska and simply the area improved there or the character of the land made the amount much larger.

Q. As I understand, this schedule, Exhibit 8, was prepared and produced here for the purpose of showing the experience you had had in connection with railroad properties and your knowledge of them, so as to evidence your competency to testify as to values?

A. That is correct.

Q. And this is not carried into the other schedules as a basis of the valuations? I mean it is not a part of the values.

A. Only a very small part of the property that is mentioned in that exhibit is in the valuation exhibit, and you are correct as to the purpose of that exhibit,—it was to show the experience that I had had in buying property qualifying me to value all of the property.

Q. But what I mean to say is that, so far as you have testified to values here of the properties of the Railway Company, and so far as you have prepared and introduced schedules here for the purpose of showing the values of railroad properties (real estate), they are shown fully without the use of Exhibit 8?

A. That is right.

Q. So that if an item appears in Exhibit 8 and also in these other schedules, it would not be a duplication?

A. Not at all.

Q. Now, turning to Exhibit 9, I understand that that is intended by you to represent what you consider at the present time the valuation of the right-of-way and other land used in the operation of the Northern Pacific Railway Company and other companies the capital stock of which is owned by the

Northern Pacific Railway Company as of June 1, 1908?

A. That is correct. I would like to qualify that answer just a little bit, to make it more clear: That is correct as to all of the property and all of the subsidiary companies shown on the statement.

Q. What other subsidiary companies are there than those shown on the statement where the values of the right-of-way and the lands used in the operation of them are not shown on this schedule?

A. The Spokane, Portland & Seattle Railway Company, in which company the Northern Pacific owns one-half, is not shown in my statement.

Q. Why is it not shown in this statement?

A. That railroad is now under construction. All of its property has been recently purchased, and it was deemed best that we should use the actual cost of the railroad rather than any one attempting to make an estimate of its value, all of this property having been acquired within the last two years, therefore an estimate would be substantially the same as the cost.

Mr. HOW: I will say that I will show the Auditor's figures with regard to that cost before we get through.

An adjournment was here taken until the morning of June 16, 1908, at ten o'clock.

On Tuesday, June 16th, 1908, the hearing was resumed at 10 o'clock A. M.

THOMAS COOPER,

re-called for further cross-examination, testified.

By Mr. DURMENT:

Q. You were to get us some information.

A. Yes; I have made up a statement. (Producing statement.)

Statement produced by witness marked for identification "Defendants' Exhibit C—Cooper."

Q. We asked you yesterday to produce a statement, showing in detail, the items making up the $353,526.69, given in Exhibit 8 as the cost of the additional terminal properties in St. Paul.

A. Yes, sir; I have prepared such a statement.

Q. I ask you whether that which is marked "Defendants' Exhibit C" is such statement.

A. That is, yes, sir.

Q. You have plats which show the property covered by this statement?

A. I have.

Q. Will you produce them?

A. The plat I now hand you shows, colored in red, all of the property embraced in the first item on Exhibit C, the cost of which is shown on that exhibit at $271,738.14.

The statement produced by witness was marked for identification "Defendants' Exhibit D—Cooper."

WITNESS: I now hand you another blue-print map, on which is shown, colored in red, the property on Exhibit C, as Como property, St. Paul, the total cost of which, as shown by the exhibit, is $56,987.55.

(Marked for identification Defendants' Exhibit E—Cooper.)

I now hand you another blue-print map on which is shown, colored in red, the property indicated on Exhibit C as property bought from the Soo, at a total cost of $23,291. I will explain that the word, "Soo" is somewhat misleading. The property was actually conveyed to the Northern Pacific by the Tri-State Land Company, a company owned and controlled by the Soo.

(Marked for identification Defendants' Exhibit F—Cooper.)

I now hand you another blue-print map, on which is, colored in red, the property referred to in exhibit C as the Wag-

ener strip, the total cost of which was $1510. And I wish to further explain that in my testimony of yesterday, in explaining the item of $353,526.69 covering property purchased at St. Paul, I stated that it included only the Commercial street property and the Como property. I overlooked that it included the Soo property and the Wagener property. I make this statement to explain what would be apparently a discrepancy between the exhibits presented this morning and what I said yesterday.

(Map produced by witness marked for identification, Defendants' Exhibit G—Cooper.)

Q. Will you take Exhibit 9, Mr. Cooper, please. As I understood your direct examination, this exhibit 9, (the first sheet of which is a schedule or statement, and the subsequent sheets of which are details of that statement) represents your present opinion as to the value of the right-of-way, and other operating property, owned by the Northern Pacific Railway Company and other companies, as stated on the schedule?

A. That is correct.

Q. And it represents only your opinion of the present land values, it does not include any improvements or anything upon the land?

A. It simply represents my judgment as to the value of the real estate.

Q. Yes, but by real estate you mean the land?

A. The land.

Q. And does not include any buildings in it or improvements on the land?

A. No improvements.

Q. Just the bare ground?

A. The naked ground; the cost of re-producing the naked ground.

Q. Now, let us understand just what you mean by the cost of reproducing the naked ground.

A. I mean the cost, what it would cost the Northern Pacific Railway Company, or any other railway company, to purchase this naked ground to-day.

Q. Well, do you consider that there is a difference between what it would cost you to purchase it and its value?

A. Yes, sir, very decidedly.

Q. Well, now, just state what difference there would be between its value and what it would cost to purchase it.

A. A railway company cannot purchase property at what would be deemed its value. That is my experience, and I have explained that yesterday repeatedly, that we cannot do so. Therefore, what would be ordinarily termed the fair value of a piece of property, a railroad company seeking to acquire it cannot hope to purchase it for that.

Q. Is there any general ratio between the value of lands which railroad companies want to buy and the cost they will have to pay for it to acquire it?

A. I am not sure that I understand your question. The "general ratio"—

Q. Well, I will put the question this way: You say that the railroads cannot buy the land except at a price in excess of its value?

A. Yes, sir.

Q. Now, then, is there any percentage of excess of cost over value?

A. Do you mean is there any percentage fixed by law or by custom, or by practice, or what?

Q. Oh, no. From your experience can you say whether there is (not exactly, but approximately) an excess? I mean what percentage the cost is in excess of the actual value.

A. That increase over value which a railway company has to pay varies very decidedly; it does not have to pay, in every instance, an increase beyond what might be termed the maximum value of the property; but the rule is that it does pay

such increase. Now, how much that increase may be, depends upon so many different conditions that no one can say just what the percentage is going to be on each piece, and it is very difficult to determine what the percentage will be on an aggregate. I should say, however, that a railway company attempting to purchase such a quantity of property as the Northern Pacific now owns, would have to pay perhaps a third more than the fair value of the property, and, in order to hold it down to as low as a third it would have to purchase its terminal properties with a great deal of care. By that I mean it would have to take plenty of time, keep itself concealed as long as it possibly could. Otherwise, that percentage would go up very decidedly, and the percentage would vary in different localities. You try to buy property in one place, and you find the feeling of the community a great deal more fair than in other places. And there are so many different conditions that enter into the purchasing of real estate by a railway company, that no matter how much experience you have had you could not sit down and formulate percentages and rules that would apply generally; the conditions vary too much.

Q. Well, in making up this schedule, exhibit 9, you have fixed the values here to include what you speak of as the value of the property and also the excess over-value which it would cost the railroad?

A. I made up this schedule on the basis of my best judgment as to what it would cost a railway company to purchase that property to-day.

Q. That includes, does it not, what you have spoken of here as the value of the land and also the excess over the value which the railroad company would have to pay for it?

A. Necessarily.

Mr. How: Will you let me ask a question here?

Mr. DURMENT: I prefer you would wait for a few questions,

Mr. How, until I get through with this.

Mr. How: I would like to ask a question, and I accorded that to your side; now, do you accord it to me?

Mr. DURMENT: If you are going to insist upon it, yes. I would prefer you would wait until I have finished with two or three matters before you do.

Mr. How: I asked it as a favor, and I don't accept it under those terms. Go ahead.

Q. Now, did you in making this schedule, then, determine in your own mind the value, that is, the value that it would be, or what others could buy it for, not for railroad purposes, of these various properties, as well as what it would cost the railroads to buy it?

A. I necessarily, in making up this statement, had some ideas and some information as to values. By values I mean what abutting and adjoining property was held at and had been sold at; therefore, the fact of having that information entered into the making up of this statement, and I do not know that if you asked me ten thousand questions I could say it any better than to say that this statement represents my best judgment as to what it would cost a railway company to purchase this property.

Q. Well, of course you have no objection to answering any questions we ask to develop our own view of it, I suppose, Mr. Cooper?

A. That is what I am here for.

Q. You say that in making up this schedule exhibit 9, and fixing the figures which you say it would cost the roads to purchase these properties, you have had information as to what adjoining or adjacent property has been sold for or held at, or what it was valued at, and that has, to some extent, entered into the fixing of this cost value. Now, I will ask you: it is true, is it not, that the figures stated in this schedule, exhibit 9, as representing your opinion of what these prop-

erties would cost the railroad to buy them on June 1, 1908, you have fixed higher than the values of adjacent or adjoining property?

A. To some extent, yes, sir.

Q. In the cases where you have had information as to the prices for which adjacent or adjoining properties have sold, or as to the values of adjacent or adjoining properties, have you added any fixed percentage to that value in arriving at the figures which you have included in this schedule exhibit 9?

A. No fixed percentage.

Q. Referring to this exhibit 9 under the Minnesota item, "Duluth, St. Paul, Minneapolis" fixing a value of $9,907,889.34 for the St. Paul properties, does that valuation for the St. Paul terminals include the properties mentioned in defendant's exhibit C?

A. Yes, sir.

Q. All of them?

A. All of them.

Q. And are they carried into this $9,907,889.34 at the same figures they are shown on Complainant's Exhibit 8 and in Defendant's Exhibit C?

A. I could not answer as to that.

Q. Well, you made up this Exhibit 9, did you not?

A. I made up Exhibit 9, and I will explain: When I made up Exhibit 9, I used the figures that I had used in the Spokane rate case. I had previously made up the valuation of the Minnesota property for the Minnesota State Railroad Commission. I used the figures in that valuation in the Spokane rate case. Therefore, the St. Paul valuation started out with the figures used in the report to the State Railroad Commission, also used in the Spokane rate case. I took the Spokane rate case figures, and added to them the properties acquired since. I could not tell, without investigating, how many of these properties were added since and how many were in-

cluded in my original statement. That is why I say I can't tell. I have got to examine my records on these things before I can answer that.

Q. Well, will you just make a note, Mr. Cooper, please, to let us know whether these properties in the St. Paul terminal as shown on Defendant's Exhibit C were carried into the St. Paul terminals as shown on the schedule in Exhibit 9 at the same figures, the same values, as they are in Exhibit C, and as they are in Exhibit 8?

A. Yes, sir.

Q. Do the properties shown on the schedule in Exhibit 9 for Wisconsin include only property the title to which stands in the Northern Pacific?

A. Yes, sir; that is true of the whole schedule, as explained on it.

Q. I presume that these properties in Wisconsin, the value of which you show in this schedule Exhibit 9, have been owned by the Northern Pacific some years, many of them?

A. The bulk of the property has been owned for quite a number of years, but there is some property recently acquired.

Q. The property which was recently acquired was shown in your examination as to Exhibit 8, was it not?

A. Yes, sir, it was included in Exhibit 8.

Q. Now, on that Exhibit 8, it appears that in Wisconsin certain of the properties had been acquired jointly by the Northern Pacific and Great Northern?

A. That is true; it does not appear so on the exhibit, but I testified to that fact in my cross-examination on the exhibit.

Q. I mean it appears from your examination.

A. Yes.

Q. Now, in this Wisconsin valuation, shown on the schedule in Exhibit 9, what part, if any, of the valuation includes the Great Northern's interest in those Wisconsin properties?

A. None of it; there are no Great Northern properties on Exhibit 9.

Q. You said, I believe, that you were not able to state what portion of this $160,220.05, given as the value of additional terminal property at Superior, Wisconsin, in Schedule 8, was Great Northern nor what portion N. P.

Mr. How: May I interpose a word? I hope the Master will not be confused at this constant misuse of the word "value". I wanted to ask a question to show that it was being constantly misused. I am confused by it—should be, if I didn't have it constantly in mind. He is not testifying to the value; he is testifying to one of the elements upon which the Master may find the value of the property; and when he talks about the value of the property as a base which he has to increase, he doesn't mean value to the railway company, nor the value of the property in its present condition, but the value for agricultural purposes if it happens to be agricultural land, and so on. I wanted to make that clear because I know that is what the witness means.

Mr. DURMENT: I think the witness himself has made it entirely clear that his valuations in these schedules were not what was known as the value of the land for other purposes than railroad purposes, but what it would cost the railroad to acquire the property.

Mr. How: I want to get a fair show to argue that it is worth to the railroad company what it pays, what it costs to get it.

The MASTER: I understand that he has testified as to what it would cost any railroad company, any one wanting to get this property for a purpose of this kind, and that is the basis of his figures here.

Mr. DURMENT: And, for the purpose of cross-examination, we are showing that that is very considerably in excess of the value for other purposes at that time.

The MASTER: If I should go down there and wanted to buy it for some other purpose, or anyone should go and try to buy it, the idea we have here is that very likely he could get it for a good deal less, but just the minute a corporation comes along and wants to buy it, up goes the price. That is the idea.

Mr. HOW: I am perfectly satisfied with that understanding.

Mr. DURMENT: And that, in his opinion, there is a certain amount of "hold-up" paid by the railroad every time, and his values include what he thinks would be hold-up. There has been no attempt to make the witness say anything else.

A. Schedule 8 does not pretend to give values. It gives the actual cost of property purchased. I cannot here segregate that item into how much of that property was purchased for the Northern Pacific and how much for the Great Northern. I can at my office.

Q. Can you tell at what valuation the item of Exhibit 8, "Superior, Wisconsin, Additional Terminal Property, $160,220.05," is carried into the schedule Exhibit 9 showing the properties in Wisconsin?

A. Perhaps I can explain this thing a little better, and indirectly answer the question, because I think we are drifting along and I am not sure that I understand what the counsel means each time. The changes that were made in this schedule, as compared with the schedule in the Spokane rate case, were simply to add certain items of property purchased since the Spokane rate case schedule was made up, *at its cost;* not on a valuation, but at its cost. Therefore, any item that is added in here since the Spokane rate case estimate was made, is put in at its cost; not on any estimated basis at all, but its actual cost.

Q. Now, I will explain to the witness that what I want as to these two items I have been asking about is this: I want to know at just what figure the St. Paul properties, covered

by or shown in Exhibit C, are carried into the St. Paul property valuation as shown on Exhibit 9, and at just what figures the valuation of the Northern Pacific's interest in the Superior properties referred to as shown in Exhibit 8 are carried into the valuation of the Wisconsin properties shown on Exhibit 9; if it is fifteen cents I want it, and if it is $150,000 I want it. Do you understand what I am driving at?

A. Yes.

Q. I know your general plan of making this up, but it is the detail as to these particular things that I am getting at now.

A. I will examine my records and prepare a statement showing exactly what the counsel wants; whether, as he says, it is fifteen cents or $150,000.

Q. In each of these two cases?

A. In each of these two cases, St. Paul and Superior.

Q. Now, on these Wisconsin properties, many of them have been held for many years, you say, by the road; did you, in arriving at the valuation you have here, consider or take into account what those properties originally cost the Northern Pacific?

A. No, sir, excepting where the property had been recently purchased.

Q. Did you, in making up these values of the Wisconsin properties, examine the figures or the records showing what was actually paid for those properties when they were first acquired by the Railroad Company, except in cases where the properties had been acquired within three years before making up the statement?

A. I did not.

Q. Is it not true that a large part of the property included in your valuation here on Exhibit 9, in Wisconsin, is what was a part of the original land-grant of the Company?

Mr. How: That is objected to as immaterial, irrelevant,

and not proper cross-examination.

The MASTER: The objection will be noted.

A. I do not believe there is a single acre included in the Wisconsin item on Exhibit 9 that was a part of the land-grant of the Northern Pacific Railroad Company. When I say "land-grant" understand that I mean land-grant, not the right-of-way grant, which is a distinct grant.

Q. Is it not true that a large part of the property which enters into the valuation, or is valued by you on this schedule Exhibit 9 as being in Wisconsin, was granted by the United States government, or the State of Wisconsin, to the Northern Pacific Railroad Company for right-of-way purposes?

A. No, sir, a comparatively small part of it. None of the Superior terminal was granted; none of the right-of-way of the Grantsburg branch; none of the right-of-way of the Washburn branch; and only a part of the right-of-way of the main line from Ashland to Superior; not including any of our right-of-way and station grounds in the town of Ashland. Therefore, out of the total, I should say, off-hand, that probably not to exceed a hundred thousand dollars of the two million dollars was granted in any way.

Q. You say $100,000 at the average of $566.66 per acre?

A. I did not say that.

Q. You say that not more than one hundred thousand dollars of the $2,000,000. Now, upon what basis per acre would you figure that to make up the $100,000?

A. I thought I made it plain in my answer, that I was making an off-hand guess at this to give the counsel some idea of the situation. If you come to analyze my one hundred thousand dollars down, I don't know that I can tell you, in detail, just how I arrived at it. I know that for a part of the distance between Ashland and Superior we obtained our right-of-way by purchase and a part of it under the charter of 1864; I could not tell now what those proportions are. I know

that in that item "Main line, Ashland to Superior, $319,726.50," a considerable portion of it is in the town of Ashland, how much I couldn't say. I was not instructed, and was told to ignore entirely how much of this property that I have been valuing was granted to the Company. That did not enter into my calculations at all, so that I am not prepared, off-hand, to give accurate figures in reference to this, and perhaps I should not have given the off-hand estimate of $100,000, because I cannot follow it up and give any detail of it.

Q. Most of the right-of-way for the main line outside of Ashland was granted to the road by the government, was it not?

A. A part of it was granted; how much I could not say. And I might add to that, that in that particular district, the Company purchased quite a lot of its right-of-way before it knew that its title dated back to 1864. In ignorance of that fact, it went on and purchased a lot of the right-of-way that really had been granted to it and paid for it. And then there was a conflict in there between the Northern Pacific grant and the grant made to the Omaha Company, which took a part of our right-of-way away from us; so that it was a very mixed-up situation there which I could not pretend to give anything like an idea of how much of that right-of-way was granted and how much was purchased without going to the records and examining it in all its details.

Q. Referring to the Minnesota property which is valued in the schedule Exhibit 9, I suppose that in making the values you have given for the Minnesota property, you have given us your judgment of the cost of acquiring that property, or that it would cost the railroad to acquire it at this time, without particular reference to what it in fact cost the railroad company when it did acquire it.

A. That is correct, excepting that one of the features that I considered in making up this valuation was what it had cost

us to purchase property recently acquired, not the old purchases.

Q. I suppose that that is identically the method followed by you as to all the properties shown on this Exhibit 9?

A. That is correct.

Q. You said, as I noted your testimony as to the values of the properties in St. Paul, that after you got from these men who examined them their valuations of the land, you added what was your judgment of the cost of the buildings?

A. I added a percentage to their figures to represent the cost of buildings that might, and in all likelihood would, be sure to be found there upon some or all of the property if any company was attempting to purchase it. In other words, we were figuring on a large area of land. If that land was not occupied by the Northern Pacific Railway Company or by some other railway company, it surely would be built up to some extent, and if any company sought to acquire it, it would have to pay for those buildings, and that was one of the items to cover which the percentage was added. A very excellent illustration of that situation is found in the Commercial street property, that we discussed here this morning, and of which an exhibit is in this case. We purchased there perhaps eighty per cent in area of the total tract. The area of the property purchased, being that colored in red on the plat, Exhibit D, is 825,775 square feet, which cost thirty-three cents per square foot. The remainder of the tract, being the portion that lies between Commercial street and the property now owned by the Northern Pacific Railway Company (the old St. Paul & Duluth freight yard), contains 139,574 square feet. We have tried to purchase that property, and my estimate of what it will cost us to acquire it is about $420,000 or $3 per square foot. That is accounted for by the fact that on one tract there is what is known as the Robinson & Cary warehouse, two warehouses, in fact. The area of that tract is 25,560 square

feet. The best price that I have been able to get upon it is $100,000, which is very nearly four dollars a square foot. Then there is the Pintsch Gas Company,—quite an extensive plant,—no price has been quoted us upon that, they informing us that if we will give them a location elsewhere equally good for their purpose and stand the expense of moving their plant to the new location, they will make a trade with us. What that will cost we can't tell; it will be quite an expensive plant to move, we know. Then there is the Standard Oil Company tract, not yet acquired, a still more extensive plant; they also decline to give us a price, but say the same as the Pintsch Gas Company, that when we are ready to give them a new location equally good for their purpose, and stand all the expense of moving their plant, they will deal with us. There is still another tract, part of the unplatted Ames tract, contains 8,800 square feet; the best price I have been able to get from the owner of that is eleven thousand dollars. He has a house on there, probably worth one thousand dollars. The only other part of that tract not yet acquired is lot 1 in block 28, owned by the Hamm Brewing Company, unimproved, containing $7,500 square feet, for which they have asked us $7,500. That situation with reference to this property explains what I have been trying to convey, that in purchasing a large tract of land, such as this, for railroad purposes, you are generally able to buy some of the property at about its fair value; as you go on buying, your purpose becomes known or surmised, the prices increase, you cannot change your location, you have got to keep on to the end; therefore, you are at the mercy of the owner of the property, excepting such protection as is afforded by your right of condemnation. Also, you can't acquire a large tract of land such as this in any large city without running into more or less improvements such as we find on this tract, the big plant of the Standard Oil Company, the Pintsch Gas Company, this large

Robinson & Cary warehouse, and we considered ourselves particularly fortunate in this tract that there wasn't more improvements on it. It would be difficult, in fact to find a tract of land of that size anywhere in St. Paul on the water-level available for railroad purposes that there wasn't more improvements upon; so that what we have purchased cost us thirty-three cents a square foot, or a total of $271,724, and covers eight-tenths of the total area. We estimate that for the remainder of the tract, containing 139,574 square feet, we will pay $418,500, or three dollars a square foot.

Q. But the estimated value of this property which you have not yet acquired is not carried into the valuation shown on the schedule of Exhibit 9, is it?

A. No, sir.

Q. Well, with reference to the valuation shown on Exhibit 9, I understood you to testify in your direct examination, that in fixing the values of the St. Paul terminal property, you employed three real estate men to value the lands and give you their valuation of the lands; that you then added to the value of the area taken a severance damage, and the cost of the improvements on the area and the damage to other improvements; is that right?

A. I did not add anything for severance damage in the property, such as our terminal property at St. Paul, because you are purchasing entire lots; therefore, there is no severance, and the percentage added on was to cover what was estimated to be the cost of the improvements that would likely be found when the property was purchased.

Q. Then there was a percentage added to cover the cost of improvements which probably would be found upon the lands?

A. Yes, sir.

Q. You added that yourself, I believe you testified?

A. Yes, sir.

Q. What percentage to the cost of the land did you add to cover these possible improvements?

A. The percentage varied very decidedly in St. Paul, and also in other cities. I think (and I am going now on my recollection only) that the percentage was as low in St. Paul as five per cent and as high—well, let me see whether I have the data here,—I find I have a copy of the report made to the Minnesota State Commission with me, and on looking over the same I observe that the percentage runs from two per cent to forty per cent, varying with the different tracts.

The MASTER: That was to cover improvements which you had to take in order to get the land itself?

WITNESS: Yes, sir.

Mr. O'BRIEN: The testimony is that that was to cover improvements which, when they had in fact taken the property, would probably be there but which in fact never existed.

Mr. DURMENT: That was the next question I was going into to make it clear.

Q. I understand this percentage added by you to the actual cost of the lands acquired to cover improvements, was not based upon the value or the fact that there were improvements existing at that time on the land?

Mr. HOW: At what time?

Mr. DURMENT: At the time the railway acquired the land.

A. No, not at all. Let me explain. The State of Minnesota called upon us to make up a report of the value of our property. They furnished us blanks and instructions. The blanks calling for the valuation on the right-of-way, yards and terminals, has on it two columns, one reading "market value", the other "right-of-way value". They explained to us what they meant by those two columns—that in the market value column we should put what we thought the land could be reproduced for, without reference to the purpose for which it was being used, without reference to improvements, sever-

ance damage or consequential damages of any character; in the other column we should put what we deemed to be the value including improvements that we might have to pay for, severance damage, consequential damages of all character. Therefore, following the instructions that the State gave us in making up this valuation, we made it up in these two columns. The first column, called the market value, was the value placed upon it by these real estate experts, revised by myself as I have explained. In order to produce this market value, this percentage that we have been discussing was added. That percentage varied very decidedly depending on a number of conditions: Where the property was the highest priced, for instance in St. Paul, there is one item of property, the highest price that I find here was valued at $3.40 per square foot, that being market value. (I am using the words "market value" and "right-of-way value" in the sense that they were used in this report to the State Commission.) There was this most valuable tract of land in St. Paul, its market value was put in at $3.40 per square foot; then, to produce the figures for the column "average value for railway purposes" we added a percentage of twenty per cent on to that item. That twenty per cent onto the three dollars and forty cents per square foot represented my judgment as to the improvements that would have to be paid for if that property was not owned by the Northern Pacific to-day, was in use for other purposes (as it would be if the railway company did not own it) and the railway company had to go in and purchase it, it would have to pay for these improvements, and the amount it would have to pay I estimated at twenty per cent increase over the market value.

Q. As I understand from the explanation you have just made to me outside of the record, in making up the values of these Minnesota properties the basis of your valuation as shown in Exhibit 9 here was in part, at least, a report made

by the Railroad Company to the Railroad & Warehouse Commission of Minnesota a short time ago?

A. It is exactly the report which we made to which you refer, excepting that the Commission called our attention to a few errors in our report, which we have corrected, and also we have added some properties acquired since the report was made to the Commission. Otherwise it is exactly the figures we turned in to the State Railroad Commission.

Q. And that report, of course, included only properties which had been acquired by the Company before the report was made?

A. That is right.

Q. And the first column, referred to in your detail there as the market value, was the market value of the land itself at that time?

A. That is correct.

Q. Not considered for railroad purposes?

A. That is correct.

Q. Then, in arriving at the total valuation, you added to that market value a percentage to cover what probably would have been the value of buildings and other improvements upon the property if the railroad company had waited until the date of that report to acquire the property?

A. That is right; and including also, outside of cities where we were buying strips of land through unplatted property, severance damage.

Q. Well, I had reference in my question to the St. Paul property, the terminal property in the cities.

A. That is correct.

Q. But that percentage had no reference to any buildings existing upon the lands at the date the report was made?

A. Not at all.

Q. And had no reference to any buildings that had ever actually been upon the premises?

A. No, sir.

Q. Now, as to the value of the lands outside of St. Paul, Duluth and Minneapolis, as carried into this schedule, Exhibit 9, that valuation is the one which was included in that report made to the Railroad & Warehouse Commission you have spoken of?

A. Yes, sir.

Q. But you have added to the market value of those lands and the percentage for improvements what you call for severance damage, have you not?

A. I just made one percentage, which included severance damage; also damage to improvements.

Q. As to those lands outside of St. Paul, Minneapolis and Duluth, the percentage you added did not cover or have reference to any improvements then existing upon the lands or which had theretofore existed upon the lands?

A. No, sir.

Q. Nor to any damage which the road had paid for other lands for severance?

A. No, sir.

Q. The percentage was added simply to cover what, in all probability, in your opinion, the road would have to pay if it sought to acquire the land at the time the report was made, and to cover improvements that in all probability would be upon the land under those circumstances, and the damages for severance which would probably have to be paid under those circumstances?

A. Yes, sir, that is right.

Q. I believe, as to the Minnesota property, you have the schedules showing the market values, and the percentages added, which went into that report to the Railroad and Warehouse Commission and upon which the Minnesota values in schedule Exhibit 9 are based?

A. Yes sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Mr. Cooper, in your examination before we adjourned at noon, you had before you certain blue-prints, the information contained upon which was carried into your valuations as shown on the schedule in Exhibit 9. I will ask you to pick out from those blue-prints the ones showing the information, or the figures which you carried into this item on Exhibit 9 under the head of "Minnesota, Duluth, St. Paul and Minneapolis."

A. I have here the detail sheets, comprising a part of the report to the Minnesota State Railroad Commission, from which these figures were carried into Exhibit 9, covering St. Paul, Minneapolis and Duluth.

Q. I will ask you to hand that to the Reporter that he may mark it.

Blue-print marked for identification Defendant's Exhibit H—Cooper.

WITNESS: On looking over the blue-print, copies of the report to the State Railroad Commission, I find that the items, "Duluth, St. Paul and Minneapolis," on Exhibit 9, do not agree with these reports. The difference is partly explained by the property since purchased; that is to say, purchased since the report to the State was made up; but I observe a difference in Duluth figures, and I do not recall at the moment that we purchased any additional property at Duluth, therefore, I would like the opportunity to check these reports before they are put in evidence. There is also still another reason: The State, in checking up these reports after they were made, called our attention to errors that they had discovered, some of them arithmetical, some omissions on our part of property which we owned, and from time to time these reports were changed, or supposed to have been changed, to

agree with the advices that we gave the State, but I am not sure, and in fact I fear that they have not been corrected, and I should like, therefore, the opportunity to check them for that reason also.

By Mr. How:

Q. Having checked them, will you complete your answer and your explanation?

A. I have not checked them. They don't check now.

Q. You know what the explanation is, don't you?

A. No, I do not. I have got to have the opportunity to check them.

Q. How long would it take you to check them?

A. I can't tell.

By Mr. DURMENT:

Q. Mr. Cooper, will you pick out from the papers you are now examining, and produce at the subsequent hearing, the detailed sheets the figures from which have gone into this item of Duluth, St. Paul and Minneapolis, and produce them with such explanations and corrections as you have to make?

A. I will be glad to do that, and will try and have them ready to-morrow morning.

Q. What we want is to find out just what of those detailed sheets went into this schedule Exhibit 9 under those three items.

A. Yes, I understand what is wanted, and will provide it.

Q. Now, coming again to the St. Paul property in Exhibit 9, the values in Exhibit 9 as fixed by you include the values of the lands on which the general office buildings and the buildings that have been used by the Company for a long period are situated, do they not?

A. All of the property of the Railway Company is included.

Q. Now, when you took the market value of the land and then added your percentage for improvements, what percent-

age did you add to the property on which the general office building stands, for instance?

A. The property on which the general office building stands is included on this report to the State Railroad Commission in a tract containing 1,170,510 square feet, and on that entire tract the percentage added was twenty per cent. I could not say how much was added to the piece of land on which the general office building stands. In fact, I did not attempt to put the percentage on by individual lots; it was by tracts, as we had them outlined on the map, which we furnished to the Commission along with the report.

The MASTER: These percentages had no relation whatever to the improvements actually on the property?

WITNESS: None whatever.

The MASTER: They are arbitrary?

WITNESS: Arbitrary, purely.

Q. "Defendant's Exhibit I" is the map referred to, is it not, or one similar to it?

A. Yes, sir.

Q. And the office building was situate on tract 1 or section 1?

A. It is located on tract 1 as shown on the map.

Q. It is suggested, in making the report to the Railroad Commission, instead of terming these tracts you termed them sections. When you say "section 1" in the report, it would be the same thing as you mean by tract 1, then, would it?

A. They are named tracts in the report, not section; the word "tract" is used.

Q. This item "St. Paul" on schedule 9, does not include anything for value of the land on which the union depot stands?

A. No, sir, that is not included.

Q. Nor for the lands used by the Minnesota Transfer?

A. No, sir.

Q. As I understand it, the "St. Paul" item does not include anything for any land except land to which the title is in the Northern Pacific Railway?

A. That is right.

Q. Well, with reference to Duluth, does that item include anything for the union depot there?

A. No, sir; the Union Depot Company made its own report to the State Railroad Commission.

Q. Then do we understand that it is true of the Duluth item on schedule 9, as well as the Minneapolis item and St. Paul item, that the valuations fixed there by you do not include valuations for anything except land the title to which was in the N. P. at the date fixed, June 1, 1908?

A. That is exactly true of the entire schedule excepting where I specify outside companies, showing the ownership of the Northern Pacific in those companies.

Q. You said in your testimony to-day some time that you did not fix values upon each particular lot of the St. Paul property, but you fixed values upon tracts which you had arranged in your mind or upon the map, that is to say, take this Exhibit I, we find one tract marked 1, another 2, another 3, another 4, and another 5, and it appears upon the face of this map that each of those tracts so numbered covers several different city blocks or lots. In arriving at this valuation, did you consider the value of each lot according to the recorded plat, or each block, or did you fix the value upon the whole tract as marked upon this map Exhibit I? or, I mean the whole tract as numbered.

A. I wish to correct, in the first instance, your statement that I testified as to any particular lot there, as to its value. What you asked me about the particular lot was the general office building lot or lots, about the percentage; not about the value, but about the percentage added. Now, answering your question, I will explain that this valuation or cost to purchase

this property (as it properly should be called) was made in this way: the three real estate men that I employed for the purpose, as I have previously testified to, were given maps by me, showing in colors like these the property which we owned. I discussed with them as to how they should make up their report, and I myself drew lines across, and I said, "Now, you will take that district there, and figure out what you consider the cost of buying that property would be per square foot." Then I did the same with the next district, and so on. They brought me their maps made up in that way, showing on each tract their views as to the cost of purchasing per square foot the naked real estate. Thereupon, I sat down and went over with them and discussed it, and had quite a discussion with them about it, in fact, took a day or two going over it; checking in that way to satisfy myself as to their figures, and, as I have testified, making some changes in them. After that was all done, then we adopted the figures as I had checked them or corrected them or modified them as the market value, the market value being used in the sense that it is used by the State; then I determined for myself what percentage I would add on to each district, as representing the difference btween market value and value for railway purposes; that expression again being used in the sense that it is used in the State's report. That percentage I arrived at by sizing up in my mind what improvements were likely to be there, if that ground was not occupied by a railroad which would have to be purchased, looking at the property surrounding it,—

Q. May I interrupt you, so I will get it clear in my own mind? The improvements of the property would have been there if they had not been owned by the railroad company at that time; is that the idea?

A. If the property was not owned by the railroad company or any railroad company?

Q. Yes, if the property hadn't been owned by any railroad

company, but owned by individuals, the improvements of the property would have been there at that time?

A. That would have to be acquired if the property was purchased. I then took, for instance, these districts 1, 2 and 3,—these three districts—multiplied the square feet by the price that we had determined upon; that produced approximately four million dollars. I figured then that if I added twenty per cent, that would produce eight hundred thousand dollars; that eight hundred thousand dollars I adopted in this particular case as the best judgment that I could form of what we would have to pay for the improvements on that tract of land if we did not own it to-day and were going out to purchase it and it was being used for commercial and industrial purposes. Of course, it goes without saying, that I could not tell what kind of improvements there would be there or what their value would be; there might have been a gas-plant there, that would have been worth several million dollars, but I had to get a figure. The figure had to be arrived at in some way and that is how I got at that particular figure. Now, the next district following, going through the same process I added thirty per cent; I find now that thirty per cent does not necessarily mean that I figured there would be more valuable improvements on it, but the price of the land was so much lower it was only figured as being worth 70 cents a square foot. Therefore, the improvements that were likely to be found there would be in greater proportion because of the lower value of the land. I am not sure if I am making myself clear, but it can readily be understood that a multiple or a percentage, as you might call it, that you would use out in the country, where you have the severance damage also to include, using that multiple of 3 would be manifestly out of the question when you are dealing with property so valuable as this property down here. If I had used that multiple here, I would have got ten million dollars worth of improvements on the property, on

property only valued at four million dollars. Therefore, judgment had to be used all the way along as to what percentage should be added.

Q. I suppose, Mr. Cooper, that you would not pretend, at this time, without the notes or memoranda which you have, to give us the values of any of these particular tracts included in this Exhibit 9; I mean of the various tracts that go in to make up the total valuation in Minnesota. You would not be able to give us an opinion as to these values on the separate tracts or parcels?

A. The report to the State Commission is in the utmost detail.

Q. Yes, I know, but it is a question of testing your present knowledge; aside from that, whether you have an independent knowledge of values such that you could, without reference to your notes or records, give us the values upon any considerable number of these tracts which go to make up the total shown under Minnesota in Exhibit 9?

A. If you mean how much do I remember of this report, I throw up my hands quick. I simply cannot, in the business that I have to conduct, the amount of it and importance of it, I cannot pretend to keep things in my memory; I have to put them in the records and go to them when I have to verify anything.

Q. Yes, of course. But here is what I mean: for instance, if I should say to you now, what in your opinion would be the value of block 10 in Bass' Addition to St. Paul, would you be able to give us a market value on that and a value for railroad purposes or right-of-way value?

A. I would not.

Q. Nor upon any separate block, without reference to the data from which you made this up?

A. I would not care to undertake to do that without reference to the data.

Q. And that is true as to all the properties which are valued, or the cost price of which you have estimated and set forth in Exhibit 9, is it not?

A. Yes, that is true. I might find some pieces in there that if we wanted to spend the rest of our lives going through that, that I could tell you something more about because there was some particular reason that it was impressed on my memory; but, as a rule, handling the business, the lands of the Company in seven states, and scattered over six thousand miles of railroad, I cannot attempt, really, to undertake to remember the value of our ownership in any one particular town lot, and don't try to.

Q. And your judgment as to the value of those lands, the market value of them, then, or of any lot included in this schedule, depends upon the reports made to you by the real estate men who examined them?

A. No, sir.

Q. This represents your independent judgment of the values as it was when you made up the schedule; do I understand that?

A. I have already explained how I made up these valuations, how I took the real estate men's reports and went over them, checked them with the purchases that we had made, questioned them as to their sources of information and tested their knowledge of the situation; I had my own knowledge of the property, a recollection of it, walked over a good deal of it while this work was going on; and from all of these things I speak of I made up this report, showing my judgment not that of the real estate men, but my judgment on these values, or rather on the cost of purchasing that property at this time.

The MASTER: When you speak of value you mean cost of purchase?

WITNESS: Cost of purchase; we are using the word "value" somewhat wrongly, as we are talking along here. It is the

cost of purchasing that property to-day.

Q. Have you at this time any independent judgment or opinion as to the value of any piece of Minnesota property included in this schedule Exhibit 9?

A. I have a very decided and a very independent judgment on most every subject, including that, but I don't make up my mind or form a judgment without the data in front of me to do so; I don't trust to my memory in matters of this kind.

Q. As I remember, Mr. Cooper, in your testimony in chief you said that in arriving at the cost price, or what would be the cost price of this property, and in fixing the valuations which you have fixed in Exhibit 9, you considered, among other things, as to certain of the properties, leases, that is, the valuation fixed for the purpose of leasing the property, and that portions of the right-of-way at different places were under lease; that is true, is it not?

A. Not exactly as you put it. I told you that portions of the right-of-way were under lease. I also told you that one of the sources of information that I used in making up this estimate of the cost of purchasing this property was the data furnished me by the agents as to the value of the property, which we asked from them in order to determine the rental for leasing purposes; that that was one of the different sources of information that we had at our command and used to some extent.

Q. Now, does the valuation which you have placed here in Exhibit 9, on Minnesota properties, include a valuation for those portions of the right-of-way which were under lease at that time and occupied by other parties under lease?

A. Yes, the leased properties are included. All of the leased properties are included in the valuation or in the figures, rather, shown on Exhibit 9. When I say all, I mean all of the operating property. We have some land-grant property leased, but all of the operating property that is leased is in-

cluded in these figures on Exhibit 9.

Q. That would include the right-of-way which is leased, and that may be all of it, I don't know.

A. Portions of the right-of-way are leased and portions of the station grounds at various places and of the terminal grounds.

Q. You also said that, in arriving at the figures which you have set forth in Exhibit 9, you had information, among other things, as to the market value of adjacent properties; that is, property owned by private individuals adjacent or near to the railroad grounds, and considered that, among other things, in arriving at your figures?

A. Yes, sir.

Q. Those adjacent grounds were often improved and occupied for commercial or manufacturing purposes?

A. Yes.

Q. Well, in those cases, where there were such improved and used tracts adjacent to or near to the N. P. lands, did you add an additional percentage to the market value of the property, to cover what you call the right-of-way or to make up the right-of-way value?

A. The right-of-way value was all made up on the basis of the naked land, without improvements. That was done throughout, in the whole report. Then, to cover the improvements, the severance damage and other consequential damages, we included the percentage that we have been discussing which, added to the market value, so-called, produced the value for railway purposes.

Q. Yes, that is true, but this percentage outside of the terminal properties included an excess over the actual value for railroad purposes, because it would cost you more to acquire it for railroad purposes than it would sell in the market for other purposes; you also added, outside of the terminals, a percentage large enough to cover the severance damages. Now,

what I want to get at is this: where you have fixed, in these items on Exhibit 9, your figures for the cost of acquiring the property and there was, adjacent to the railroad property, other improved property, used for business purposes, upon which you obtained, for your information, the market value of that land, did you add to the market value an excess of cost over the market value because the railroad would have to pay more than the market value?

A. I think I must be unusually stupid.

Q. Well, we will not discuss that (it may be myself, but we will decide that outside of the law-suit). I will put a concrete example: assume, for instance, at St. Cloud or near St. Cloud, you are valuing a tract over which the road runs,—the right-of-way; just across the street from that is a lot, or a number of lots, that are built up with stores and rented for stores. In investigating and getting your information upon which you were making up your idea of the cost price to reproduce this, suppose this is one of the tracts where you found from your agents the value of that land, and assume, for instance, the value of that land, (the market value) was a dollar a foot.

A. Including the improvements?

Q. No, just the land itself. What would be a fair value to put that, say twenty-five cents?

A. Yes, say that.

Q. Leaving off the improvements?

A. Say twenty-five cents instead of a dollar.

Q. Now, in figuring the value or the cost price to the railroad of this land in St. Cloud, just across the street from that owned by private owners, you would not figure it at twenty-five cents a foot and then add simply something for a severance value and the improvements that might have been on the land, but you would figure the value for railroad

purposes more than twenty-five cents, wouldn't you, of your lands?

A. I think perhaps I can best answer it (at all events, so as to make sure that I am answering it to my own satisfaction, it may not be to yours) by saying this: That where we were getting information as to the values of abutting property, say through the town of St. Cloud, perhaps abutting on the railroad, we got the values without the improvements; if the property was improved and had been recently sold, if that was the information we were getting, we would estimate what the value of the improvements was and deduct it and say that that was about the price of the lot without the improvements. That is the figure we would then use for our market-value figure, putting them both on to the values of the naked land. Then we would, of course, add the percentage value thereafter to reach the value for railway purposes.

Q. That is, then, the actual or market value, as you put it in your schedule of the right-of-way, would be approximately the same as the market value of the bare land across the street?

A. Yes, sir.

Q. And then to get your figures you would add the percentage for these other matters?

A. Yes, sir.

Q. To bring it up to what you think it ought to cost?

A. That is correct.

Mr. DURMENT: We offer in evidence, at this time, as a part of the cross-examination of this witness, defendants' exhibits C, D, E, F, G and I.

Mr. HOW: They are objected to as irrelevant, immaterial and not proper cross-examination.

The MASTER: Objection noted.

Q. How much of the right-of-way in Minnesota, outside of St. Paul, Duluth and Minneapolis, if you know, the cost

of purchasing which you have estimated in this exhibit 9, was purchased by the Northern Pacific, and how much of it was granted to it or given to it by the government?

Mr. HOW: That is objected to as immaterial, and not proper cross-examination; it has not anything to do with the topic of this witness' testimony.

The MASTER: Objection noted.

A. I could not answer that without going through our records.

Q. It is true, is it not, that a large part of the right-of way of the Northern Pacific Railway Company, outside of the three cities Duluth, St. Paul and Minneapolis, was originally granted to the Northern Pacific Railway Company, or its predecessor, by the United States Government, for railway purposes?

Mr. HOW: That is objected to as irrelevant, immaterial and not proper cross-examination.

The MASTER: Objection noted.

A. The entire right-of-way for the main line in Minnesota was granted by the charter of July 2, 1864, excepting such portions as had previously been entered under the land laws; excepting, also, some portion that had previously been granted to the Lake Superior & Mississippi River Railway, but, excepting the main line, there was, of course, no other grant of right-of-way in Minnesota. There was no grant by the charter of 1864 to any of the branch lines in Minnesota, nor to the main line from St. Paul to Staples.

Q. But it is true, is it not, that, as to the branch lines, they were largely constructed through lands which were within the limits of the grant made in aid of the Northern Pacific Railroad, and were constructed across those lands while they were yet owned by the road, or over rights-of-way which had been reserved when the land had been sold?

A. Quite a number of the branch lines owned by the Com-

pany in Minnesota were acquired by it by purchase; it did not construct them at all. Looking over the list, I observe a number of the branches that were built by the St. Paul and Duluth Railroad, which company the Northern Pacific purchased. That is true of the Cloquet branch, the Miller branch, the Grantsburg branch, the Taylors Falls branch, the Stillwater branch, and, of course, the entire St. Paul and Duluth system is a purchase by the Northern Pacific, and the Northern Pacific got no grant for its right-of-way. I could not say, without much further examination and looking up of records that I can give now, how much of our system in Minnesota was constructed upon the charter right-of-way of the Northern Pacific Railroad Company, or how much, if any of it, was constructed across the land grant of the Northern Pacific Railroad Company.

Q. You did say, however, that the main line, except between Staples and Brainerd, had been constructed over right-of-way granted by the federal government?

A. We are apt to get mixed up by the use of the word "main line" because, of course, the St. Paul & Duluth line from St. Paul to Duluth is main line.

Q. Well, excluding that.

A. But the line from the state line between Wisconsin and Minnesota to Moorhead,—the main line of the Northern Pacific Railroad, the charter line,—for that line the United States government gave a right-of-way 400 feet in width, excepting to such portions of it as had been previously appropriated for other railroads or entered by homesteaders, or, I should have put it, in the first place, had granted a right-of-way 400 feet wide for that main line across all vacant public lands.

Q. Is that the only portion of the lines of the Northern Pacific Railway Company, in Minnesota, which you can say

was built over right-of-way granted by the state or federal government?

A. No.

Q. What others were built over such right-of-way?

A. I was going to answer that. There were portions of the St. Paul & Duluth system (St. Paul & Duluth railroad) on which the right-of-way was granted either by the state or the federal government (I can't say which off-hand) but I do not know of any other part of our system to-day in Minnesota excepting the main line constructed under the charter of July 2, 1864, and portions of the St. Paul and Duluth Railroad system, for which the right-of-way was granted. There may have been; I cannot recall about the Little Falls & Dakota Railroad; it had a land-grant but I am not sure if it had a right-of-way grant.

The MASTER: You speak of the charter or grant under the charter; that is, do I understand by that that when the Northern Pacific was organized by act of Congress there was at that time a right-of-way given it; is that what you refer to?

WITNESS: Yes, sir.

The MASTER: By the act of July 2, 1864. But the act that gave the charter, gave the right-of-way?

WITNESS: Yes, in that charter we were given a right-of-way and also given a land-grant.

The MASTER: That was not given as a donation to the State and then from the State to the Company, but it was a donation by Congress outright.

WITNESS: Yes, sir.

The MASTER: And when you refer to the charter you refer to that act?

WITNESS: Yes, that act of July 2, 1864.

Q. For the purpose of explanation, you have spoken of the St. Paul & Duluth road as being a part of the Northern Pacific system. Is the St. Paul & Duluth road and its branch

lines you have mentioned now owned direct by the Northern Pacific Railway Company, or does it simply hold the stock in the St. Paul & Duluth road?

A. The title to all of the railroads of the St. Paul & Duluth Railroad Company is all vested in the Northern Pacific Railway Company, and is all included in my Exhibit 9.

Q. Now, can you separate this item of $25,362,383.41, total valuation, put in the second column of Exhibit 9, so as to show what part of that is for the St. Paul & Duluth railroad and what part of it is for the remaining, the original Northern Pacific?

A. You will find attached to that a detailed statement in which is shown all of these various lines in Minnesota, each piece of main line and each branch, separately. It, of course, does not show which was St. Paul & Duluth, but I think perhaps that is in such detail that I can show the St. Paul & Duluth items. Looking over casually, I do not see any item that is part St. Paul & Duluth and part Northern Pacific, but I am not positive until I go into it very carefully. I think, though, that I could readily do that.

Q. Well, will you do that?

A. I will get it or have it produced.

Q. And the terminals, as well, outside?

A. I know what you mean.

Q. You have fixed in Exhibit 9, in this second column, in round numbers $25,000,000 as the present value for right-of-way purposes or the cost of acquiring it?

A. As the cost of purchasing that property, yes, sir.

Q. At that time?

A. At this time.

Q. Assuming that all this land was purchased at its fair value for railroad purposes at the time of its acquisition, what, in your judgment, would be a fair estimate as to the aggregate amount paid for it?

A. I could not answer that. Part of the railroad that is included in there was constructed as far back as the sixties. The St. Paul & Duluth railroad, I think was constructed out of St. Paul before 1870; I was in Scotland at that time and was not very familiar with land values. I mention that to show the difficulty of myself or anyone attempting to put a figure of that kind.

Q. In your judgment, would it be ten per cent of the value which you have fixed for it in this Exhibit 9, for the cost of acquiring at this time?

Mr. HOW: Objected to as irrelevant, immaterial and not proper cross-examination; the witness has already testified that he does not know anything about it.

Mr. DURMENT: He has also testified that, for more than 20 years, he has been in the employ of this railroad company and railroad companies and dealing in lands in new country in different sections.

The MASTER: I do not think it is a case where the Master should rule on the testimony. It will be taken subject to the objection.

A. I could not answer that question.

Q. Then you can form no judgment as to what was the fair value of this property for railroad purposes at the time it was in fact acquired by the Northern Pacific Railway Company, or its predecessors, for railroad purposes?

A. I could not.

Q. I understand you to say that in fixing the cost price in this schedule of Exhibit 9 you did not take into consideration at all the original cost price of the terminals which were bought years ago and had been used and occupied by the road for 25 or 30 years?

A. No, sir.

Q. Nor did you take into account their value at the time of the acquisition?

A. No, sir.

Q. In making up your figures for this Exhibit 9, did you segregate the values of town properties outside of St. Paul, Minneapolis and Duluth, from the farm lands or land outside of the towns?

A. Yes, sir.

Q. Have you a detailed statement showing that separation or segregation, as you made it for the purpose of making up this Exhibit 9?

A. I do not know whether that data has been preserved or not.

Q. It is not one of the details attached to this schedule of Exhibit 9?

A. Oh, no, the details attached to Exhibit 9 only show each piece of main line or each branch, it does not pretend to go into further detail than that, but in making up Exhibit 9 I did go into further detail, taking each town as we went through it and valuing it separately.

Q. In valuing the town properties outside of St. Paul, Minneapolis and Duluth, in this segregation you made for the purpose of arriving at your conclusion as to these figures, did you in each instance add a percentage for improvements which might probably have been upon the lands?

A. Yes, sir.

Q. In case you had acquired them?

A. Yes, sir.

Q. Did you also, as to those town lands outside of St. Paul, Minneapolis and Duluth, add such a percentage as would cover for severance value, too?

A. Yes, sir.

Q. And as would cover for probable damages to other improvements than those upon the lands?

A. Yes, sir.

Q. Then you used the same percentage to add to the mar-

ket value for the lands in the towns and villages outside of St. Paul, Minneapolis and Duluth, as you did for farm lands?

A. Oh, no; not at all.

Q. Not the same percentage?

A. Oh, no.

Q. But a different percentage including the same elements?

A. That is right.

Q. The cost of severance, damage to probable improvements and to other probable improvements not taken?

A. Yes, sir.

Q. Many of those towns had no other railroads than the Northern Pacific?

A. That is right.

Q. Some of them had other railroads, I suppose?

A. Yes, sir.

Q. I notice here that in all these details attached to Exhibit 9 you have fixed a value per acre for the lands, or nearly all of them.

A. I don't think the word "fixed" is right. I have shown the value per acre, produced by dividing the acres into the column of valuations which produces a figure per acre.

Q. In arriving at that value per acre which you have fixed in these details attached to Exhibit 9, you included in the aggregate value, which you divided by the aggregate acreage to produce the rate per acre, the farm lands or lands outside of villages and towns and the village and town lands outside of St. Paul, Duluth and Minneapolis, did you not?

A. Everything is included that the Company owns.

The MASTER: That is, as I understand the question, it is that he apportions the whole cost to the whole acreage?

Mr. DURMENT: Yes.

The MASTER: Without trying to separate it at all, but he

just takes the whole acreage and the whole cost and proportions it in that way?

Mr. DURMENT: Yes, outside of St. Paul, Minneapolis and Duluth.

The MASTER: Outside of the three terminals?

WITNESS: Well, I also show it in the three towns in the same way, precisely.

Q. Yes, but my question was confined to those outside. What I am driving at is this: your value per acre as fixed in these schedules is the same for country lands as for village lands or city lands?

A. The percentage?

Q. No, the average value.

A. Per acre?

Q. Yes.

A. No; I don't think we understand each other. Take Minnesota: you see, in this statement Exhibit 9, there are no figures showing market value and railway value, as there was in the Minnesota report. The only figure shown as to value here is the cost of purchasing, which includes all these elements that we speak of—of severance and improvements and everything else. I only have the one figure in that report and some confusion may have resulted from our referring to the Minnesota report where the two figures are used, so that this sub-exhibit to Exhibit 9 of Minnesota shows, for instance, (the first item,) "West Duluth to White Bear," that our right-of-way in that distance consists of 2,409 acres; worth, or estimated cost to reproduce, $503,414.55, which produces $208.97 per acre.

Q. Then what I am getting at is this: in making up that total valuation, do you arrive at it by taking some fixed average and adding to it or increasing it by the multiple, or do you take each piece of town property at its value and increase it by the multiple, and then take the country property out-

side and increase it by its multiple and add those together to get this value; I mean in this schedule here. In other words, do you take an average of the values, say of the farm lands and the town lands, and arrive at your cost of reproduction by increasing that by the multiple 3, or do you make your increase by the multiple upon the separate values of town lands and the separate market values of the other lands?

A. I will explain just how one item appearing on the detailed Minnesota list attached to Exhibit 9 was made up, which will serve as an illustration as to how all of them were made up. Starting at the main-line junction of the Taylors Falls branch, the first section that appears here reads "From main line junction to corporate limits of Wyoming, including both legs of the Y"; then it shows that between those two distances we had 1180 lineal feet of right-of-way 100 feet wide, 1,000 lineal feet 50 feet wide, 540 lineal feet 66 feet wide, that that gave us a total acreage right-of-way of 10.70; that the market value per acre of that strip was estimated to be $100; that the right-of-way value was estimated at $300; then follows the extension of the values produced on the two bases, one at $100 per acre to give the total market value of that part of the right-of-way, the other at $300. Then follows the next item, which is our right-of-way between the corporate limits of Wyoming and the corporate limits of Chisago; that is extended out in precisely the same way, the value in this case being $50 per acre instead of $100 per acre, as the preceding item was. Then follows an item within the corporate limits of the village of Chisago, showing what the width of the right-of-way was, the area, and that is put in at $200 per acre, that being village property, a higher value. And so it goes on all the way down until it reaches the end of the branch at Taylors Falls, there being in that twenty miles of distance nine different calculations of the right-of-way and nine different values of it, changing as the character of the

country changed and as we got into the villages and out of them again.

Q. Will you have that marked so that we may offer it, and that will show clearly the system followed?

The blue-prints referred to by the witness were here marked for identification "Defendant's Exhibit J—Cooper".

Q. I notice on this Exhibit J that for property within the corporate limits of Lindstrom, where the market value is stated to be $100 per acre, you have multiplied it by 3 to get the right-of-way value per acre.

A. That is right.

Q. I notice that in the first item on this Exhibit J, showing from the main-line junction to the corporate limits of Wyoming, the average market value is fixed at $100 per acre, and to get the average right-of-way value per acre you have multiplied it by 3.

A. That is correct. That is inside the corporate limits.

Q. Will you point out, if there be an item on this Exhibit J which covers right-of-way which is not within the corporate limits of a village or city, that item?

A. The item reading "Corporate limits of Chisago to corporate limits of Lindstrom" is of the character you desire.

Q. That fixes the average market value of the land at $100 per acre and the average right-of-way value per acre at three times as much?

A. That is right.

Q. It appears, then, from this Exhibit J, that you take the market value of the property, whether it be within the corporate limits of a town or outside, and then increase it by three-fold to arrive at the average right-of-way value. Was that done in arriving at the figures in Exhibit 9 outside of St. Paul, Minneapolis and Duluth properties?

Mr. How: You mean all over the system?

Mr. DURMENT: Yes.

A. No, I use the multiplier 3 very generally through agricultural property; also through the smaller towns and villages; but through the larger towns, such as Stillwater, Brainerd, Staples, Moorhead, Fargo and so on, all the way to the coast, the multiplier changed, I made a less multiple; and, of course, in the very large cities, such as St. Paul, as I have already testified, the multiple I used ranges from 5 per cent to 40 per cent.

Q. What multiplier did you use in the city of Brainerd, for instance?

A. Without stopping to work out the figures, I find on looking at the report that the market value per acre within the corporate limits of Brainerd is put in at $1,918.96 and the value for railway purposes at $2,910.41 per acre in each case.

Mr. O'BRIEN: Practically 50 per cent?

WITNESS: Yes, approximately 50 per cent increase in that particular case.

Q. Well, take the town of Staples, what was the increase from market value to right-of-way value?

A. I wish you would let me take them as they come.

Q. Do that if you wish.

Mr. HOW: Are you going through the whole state? If you are, he might as well take them in his own way.

WITNESS: I will call off a number of them.

Q. You may do so.

A. I find here Little Falls, where the market value is put in at $637.40 per acre and the value for railway purposes at $956.11.

Mr. O'BRIEN: Won't you give the percentages?

WITNESS: They are not figured out here.

Mr. O'BRIEN: Approximately. That is approximately 50 per cent?

WITNESS: Approximately 50 per cent increase. I find that at Staples the market value is put in at $700 and the value

for railway purposes at $2,100, a multiplier of 3 having been used at that point. I find that at Stillwater the average market value is $7,137.68 per acre and the value for railway purposes $14,052.68, an increase of approximately 100 per cent. White Bear is put in at $2,000 per acre for market value and $3,000 the value for railway purposes, an increase of approximately 50 per cent. At Dilworth the market value is $50 per acre and the value for railway purposes $80 per acre. I might explain that the reason why that small increase is made at Dilworth is because we own a very large tract of land; instead of a narrow strip for right-of-way, we own there a strip which is something like 1,000 feet wide, therefore, the severance damage decidedly decreases per acre as compared with what it would be for a narrow strip. With the exception of the particular cases that I have given, and also excepting the three large terminals, St. Paul, Minneapolis and Duluth, the multiplier used was uniformly 3, excepting where we owned gravel-pits: there I made no multiple, owning, as we did generally, an entire 40-acre or 80-acre tract, there being no severance damage in connection with it.

Q. Can you give us the aggregate of the market values which, using the multipliers you have used, aggregate the $25,362,383.40 given in Exhibit 9?

A. It will take some little figuring to work that out, but I will try and have it ready when I come tomorrow.

Q. If you cannot have it when you come tomorrow, you can have it a little later.

The MASTER: The hour of adjournment is at hand, gentlemen.

Mr. DURMENT: I think with what Mr. Cooper has made a note of that he is to furnish us, we have finished with the Minnesota matter on this schedule, and we will finish schedule 9 with a few more general questions.

The MASTER: That is, you will take that up when he is on the stand again?

Mr. DURMENT: Oh, yes.

The MASTER: There is one question that suggests itself to me, that is this method devised for reaching values: how was it brought about? Is it in common use, was it worked out for the purpose of reaching values in response to those requirements? That is, I did not know but there might be some general system among railroads for the purpose of reaching those results.

WITNESS: Do you allude to this multiplier, this increase?

The MASTER: Yes, the multiplier, this system of reaching the right-of-way value as distinguished from the market value.

WITNESS: I will explain that, after we received the instructions from the State Railroad Commission of Minnesota to prepare a valuation of our railroad in Minnesota, a meeting was held in my office of the various officials of the various roads in Minnesota having charge of the right-of-way and land matters, the officials who were charged with the duty of preparing the valuation for their respective companies for this report to the State Railroad Commission. We there discussed very thoroughly the question of what multiplier we should use, the State having instructed us to prepare our report to show these two columns distinctly, the market value and the value for railway purposes. At that meeting, as I say, all the railroads were represented, all were men who had had experience in buying right-of-way, just as I had had. And as the result of that discussion we concluded that a multiplier of 3, where the property was of an agricultural character, or in the smaller towns and villages, would be about right to cover the difference between the so-called market value and the value for railway purposes, but that in the larger towns and in the cities a much lesser multiplier would have to be used, which would have to be determined by each company for itself, and

we made no attempt to adopt any fixed basis in the larger cities and towns. The multiplier of 3, that I have used here, I find, by checking it with our actual experience, is low. I feel that it is too low. If I were doing this work all over again, I should increase it, because we cannot buy right-of-way through an improved country. Of course, there comes in an element of difference. You go to work to buy a right-of-way through a new country, that has never been developed, and your improvement damage and your severance damage all gets much smaller; but you go through a highly improved district and you can at once see that your severance damage and your allowance for improvements and all of those other features immediately go up. I am satisfied that, taking it on the whole Northern Pacific system together, the multiplier of 3, used outside of the cities and the larger towns, is very conservative.

The MASTER: That answers my inquiry—what I wanted to find out.

Mr. O'BRIEN: I was going to suggest that we might state our position on that question. Of course, this has arisen from the fact that the courts have many times said that one of the elements to be considered would be the cost of reproducing the property. Now, when that refers to the rails and the cars and the engines and the grading, the cost of reproduction is the present value of the property, less any depreciation, from lapse of time, and so it is a perfectly fair test; but we insist that this test as to the cost of reproducing the real estate cannot be made and that it is impossible to accept this multiplier, either because of severance damage or because of imaginary buildings which never did exist, and that the cost of reproduction can only be considered with reference to the fair value, and that, as a matter of fact, all of the real estate, being acquired at much less than its present value, the test with regard to

real estate should be its value and not the cost of reproduction.

Adjourned until the morning of June 17, 1908.

On Wednesday June 17, 1908, the hearing was resumed.

THOMAS COOPER,

recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. You have some information that we asked you to get yesterday that you want to give at this time, Mr. Cooper. You may give it to the Reporter.

A. Yes, sir. The date of the conveyance from the Northwestern Improvement Company to the Northern Pacific Railway Company covering the so-called Commercial street property and the Como property at St. Paul, is January 17, 1908. Also, I was not sure as to the rate of interest charged by the Northwestern Improvement Company on the expenditures which it made on the various properties which it conveyed to the Northern Pacific Railway Company. I have now ascertained definitely that it is six per cent.

Q. As I remember it, you have testified that a good deal of the terminal properties elsewhere than in St. Paul, shown or included in the figures on Exhibit 9, were acquired through the Northwestern Improvement Company, in the same way. Was the interest charged in those other cases six per cent, as in the case of St. Paul?

A. Very little of our property outside of St. Paul, Minneapolis and Superior was acquired through the Improvement Company, but what was acquired through the Improvement Company was all transferred over on the same basis, towit, the actual expenditures made by the Improvement Company, plus interest thereon at six per cent.

Q. Were the terminals acquired in recent years in the states of Washington and Oregon acquired through the agency of some similar corporation as that of the Northwestern Improvement Company, or were they acquired direct?

A. The terminal property at Tacoma was all acquired direct, either by the present Railway Company or its predecessor, the Northern Pacific Railroad Company. At Seattle the property was acquired either by the Railroad Company or the Railway Company, direct, excepting a portion of our terminals there which were purchased by the Great Northern Railway Company for the joint account of the two companies; that is to say, itself and the Northern Pacific Railway Company. With the exception of the property purchased in the way I have described at Seattle by the Great Northern Railway Company, all of the Seattle property was acquired direct by the Northern Pacific Railroad Company or Northern Pacific Railway Company. At Bellingham we purchased, within the past few years, approximately $90,000 worth of terminal property, which purchase was made by the Improvement Company and transferred to the Railway Company within the past six months on the same basis as all of the other transfers that we have talked of; that is to say the actual cost, plus interest at six per cent. At Everett, Aberdeen, Hoquiam and South Bend the properties were all purchased direct by the Railway Company or its predecessor the Railroad Company. That covers all of our Pacific Coast terminals. And at Spokane the property was all acquired by the Northern Pacific Railroad Company or the Railway Company direct; and, in fact, taking all of our important terminals, we have covered all that came to the Railway Company through the Improvement Company in our testimony; that is to say, some at St. Paul, some at Superior, some at Bellingham and some at Minneapolis; and that is all of our important terminals.

Q. As I remember your testimony with references to the figures given or the valuations stated in this schedule Exhibit 9,

as to property in North Dakota, Montana, Idaho, Washington and Oregon, it was that you did not find the market values, that is, you did not segregate the market values and then arrive at your valuation by using a multiplier 1, 2 or 3, as in the case of Minnesota?

A. That is correct.

Q. Now, will you please, briefly, although it may be something of a repetition, state just how you arrived at your values, or what system you followed in arriving at your total valuation for the North Dakota property, as that total valuation is shown on Exhibit 9?

A. I had placed in front of me our right-of-way plats for our lines in North Dakota, showing exactly the area of our right-of-way and station grounds; also I used the station plats to supplement the right-of-way plats, and then I commenced at one end of the state, towit Fargo, and made up my estimate of the cost of purchasing the property by taking the station plat of Fargo; had before me all of the information that our records showed as to the value of our property there, such information being given, as I have previously explained to some extent, by the values reported by our agents for leasing purposes and my own knowledge of the situation there. At Fargo, my recollection is, we tried to purchase some additional property, and we had some information as to the prices that had been quoted us there to aid in making up this valuation; and from these sources I made up my estimate of the value of our Fargo property. Then, continuing west, I estimated the agricultural value of the right-of-way between Fargo and the next town of any importance, having a general knowledge of agricultural values in North Dakota and that district, also having purchased some property there for additional right-of-way, for reservoir purposes; when I reached the next town, I repeated the same operation as I had at Fargo, valuing our station grounds in the town, then continuing with the right-of-way, on an agricultural

basis, to the next town; and so on all through the state, making my estimate first on the main line, then I retraced my steps and took the first branch west of the state line and made up my estimate on the branch in precisely the same manner; and so on with all of the branches, finally winding up with the total valuation, which I divided into the total acres and produced a value per acre; also divided it into the total miles of main track and produced a value per mile of main track. I had, of course, to assist me in doing all of this, all of the sources of information which I have enumerated,—the purchases that we had made, the information derived from our agents as to values for the purpose of determining lease rentals, my own knowledge of agricultural values in North Dakota, and so on.

Q. Is this valuation given on Exhibit 9 of $10,363,506 for North Dakota, your valuation of it for railroad purposes, or is that the market or agricultural valuation?

A. That is my estimate of what it would cost the Northern Pacific Railway Company, or any other railway company, to purchase that property today.

Q. That is what we spoke of in the details of the Minnesota property yesterday as the right-of-way value of the land?

A. They call it, I think, "Value for railway purposes."

MR. HOW: That is what the State calls it, and we adopted that term because the State calls it that.

Q. Now, that value, is it greater or less than the market value or the value for agricultural purposes?

A. Well, you can't speak of property in the town of Fargo as having a value for agricultural purposes, of course,—

Q. I will change my question.

A. —but it is its value, it is the cost of purchasing that property. I don't know any other way to put it.

Q. That is to say, it is your judgment of what it would cost the Railway Company to buy that property on June 1, 1908, for the purposes of railway use, or any other railway company,

to purchase it in that way, provided the property had not theretofore been in use by the railroads?

A. That is right.

Q. I suppose that in North Dakota, as was testified with reference to the Minnesota lands, railroads cannot buy lands for railroad purposes at its market value for other purposes or its reasonable value for other purposes?

A. Generally speaking, that is true.

Q. Is there any difference between North Dakota and Minnesota as to the opportunities or the ability of railroads to buy property for railroad purposes at its reasonable value from what it is in Minnesota?

A. I have not found any difference in human nature in that respect anywhere on the line; they all want all they can get from us.

Q. I suppose that in arriving at this valuation of $10,353,506 in Dakota, you included severance values and values for improvements that possibly might have been upon the lands had they not been theretofore owned by the railroads, and damages to other improvements, as in the case of Minnesota property?

A. That is right.

Q. How did you arrive at this valuation to include what I will term here (because it is expressive) the amount to be added for the hold-up, or in excess of a reasonable market value, and the amount to be added for severance value and for improvements which might have been upon the land in Dakota cases?

A. I made up my estimate in North Dakota on practically the same basis as I had previously made the estimate in Minnesota, using the same multiple (substantially so) in the agricultural districts and in the towns following the same percentage, that is to say, adding a percentage which varied with the size of the town and the conditions in each town that we passed through; and what I say of North Dakota applies to the entire system. In other words, my methods used in preparing the re-

port for the state in Minnesota was followed by me in making up this statement for the entire system.

Q. That is to say, you determined the market value, then used on the agricultural lands a multiplier of 3; in the towns, you varied it as conditions required, that is, varied the multiplier?

A. I do not think that I used a multiplier of 3 all along the system. I think I varied that some, making it higher in a highly developed agricultural district and lower in a district of less development.

Q. Well, in North Dakota in what part of the state did you use the multiplier 3?

A. I could not answer definitely. I have not the figures with me showing just how I made up this estimate. When I say *this* estimate, understand always that as I have already testified, I am using the same figures that I made up for the Spokane rate case. I will add to that answer, the multiplier of 3 is too low in a highly developed agricultural district, because of the state of its development, and the multiplier of 3 is too high in a district where there has been very little agricultural development, the reasons for that being manifest that where you are running through a highly developed district you are bound, sooner or later, to run through a man's improvements and have to pay for them; you are liable to disarrange his drainage system or his irrigation system, or run through his orchard, all of which you have to pay very substantially for; but these items are, of course, less frequent in a district in which the development has been less.

Q. Comparatively little of the property in North Dakota is terminal property or city property, I suppose? That is, of your railroad property included in this figure.

A. Oh, not at all; in North Dakota we run through practically every large city in the state, and there are some good, substantial towns in North Dakota. There is Fargo, Grand Forks,

Jamestown, Bismarck, Mandan, Dickinson; and then there is a string of towns from three to five thousand inhabitants, all of which we touch. There are no large cities; that is to say, Fargo and Grand Forks are the largest.

Q. But those Dakota towns, most of them, are of the size where you used the multiplier 3 in Minnesota, are they not, that is, the great majority of them?

A. No; not at all.

Q. What multiplier did you use in Fargo?

A. A multiplier of 3 in Fargo and Grand Forks would be manifestly too high. Now, I could not answer what multiplier I used in Grand Forks or any other particular place. I do not remember it, and I have not preserved the data.

Q. Are you able to give us the market value then, of this property which you have placed here at its value for railroad purposes at $10,353,506?

A. I am not.

Mr. HOW: You mean its market value for commercial or agricultural or residence purposes?

Mr. DURMENT: Well, I mean its market value for purposes other than railroads; the market value which he considered in making up this estimate.

Q. And I suppose your answer is based on that understanding of the question?

A. I am not.

Q. Are you able to state its reasonable value for the purposes for which it is best adapted, of course excluding the elements of damage which would arise from taking it for railroad purposes?

A. I am not.

Q. I intended to have my last question apply to that, either in gross or in detail. Are you able to state the reasonable value for the purpose for which it is best adapted, excluding these

elements of damage which would arise from taking it for railroad purposes?

A. I am not.

Q. In arriving at the valuation of $10,353,506, for North Dakota, did you take into consideration what the lands had cost the Northern Pacific Railway Company, or its predecessor, when they were acquired for railroad purposes?

A. I did not, excepting as to recent purchases, to guide me in arriving at what it would likely cost us if we were purchasing now.

Q. Do you know what was the reasonable value of the lands included in this valuation of $10,353,506 at the time when they were acquired by the Northern Pacific Railway Company, or its predecessor, first?

A. I do not.

Q. It is true, is it not, that a large part of the property on which you have fixed this valuation of $10,353,506 was granted by the United States Government to the Northern Pacific Railroad Company (I think it was) the predecessor of the present Company?

A. It is true that part of it was; I could not say what proportion.

Q. Can you say whether it was as much as half?

A. I could not.

Q. When I say was granted to the Northern Pacific Railroad Company for railway purposes, I mean to include in the question not only a right-of-way grant, but also those portions where the right-of-way passes over lands which were granted to the Company and where they did not have to purchase the right-of-way from some private individual or private owner.

A. My answer is the same; I could not attempt to make any segregation of that item.

Q. Nor as to whether it is ten per cent, or twenty per cent, or seventy-five per cent?

A. I could not.

Q. You have stated, as I understand it, that you are not able at this time to tell us what percentage has been added to the market value in the case of any lands in any village or agricultural district in North Dakota in arriving at this valuation of $10,353,506?

A. That is correct.

Q. Nor as to what percentage was added to the market value of the terminals, if there be such, in North Dakota?

A. That is correct.

Q. And you are not able, at this time, to say what multiplier you used in case of any of the lands in North Dakota in arriving at this valuation of $10,353,506.

Mr. How: That is objected to as having been testified to at least three times.

A. I am not.

Q. Now, in order to cover this whole thing in one question: it is true, is it not, that the valuations fixed by you in this Exhibit 9 for the properties in Montana, Idaho, Washington and Oregon, were arrived at in the same way as in the North Dakota valuation we have been talking of?

A. That is correct, excepting that in Washington, because of the large terminals and their value, I employed, as I have previously testified, outside assistants in helping me to determine the values of the large terminals. Otherwise, the answer is yes.

Q. And you are not able at this time to give us any more information as to the properties in Montana, Idaho, Washington and Oregon, than in the case of the properties in North Dakota, as to what percentage you added to the market values, nor as to what multiplier you used, than you have given us in reference to the North Dakota lands?

A. I am not.

Q. And you are not at this time, in reference to the lands

in Montana, Idaho, Washington or Oregon, or in any of those states, able to state the reasonable value of the lands for the purpose for which they were best adapted, eliminating the severance damage and the probable building addition and these other elements of damage which would arise from taking it for railroad purposes?

Mr. HOW: You mean for the purpose for which they are best adapted other than railroad purposes, I suppose?

Mr. O'BRIEN: Not at all.

Mr. DURMENT: No.

Mr. O'BRIEN: We mean eliminating the speculation.

Q. Excluding these elements which have been added to the market value in order to arrive at a railroad value.

A. I am not.

Q. Your answer is no, I suppose, either as to the whole, or any particular tract, the answer to this last question?

A. That is correct. I wish to amend my answer: some of this property has a higher value for railroad purposes than any other purpose, and as to that property the figures given in this statement represent the value for that purpose. By "value," I mean the cost of acquiring it for that purpose.

Q. Taking the property which you say has a higher value for railroad purposes than for other purposes, what particular property do you refer to when you say that there is certain property included in the schedule in these states that has a higher value for railroad purposes than for any other?

A. Gravel-pits, for instance; also, the greater part of our property at Tacoma; also a considerable portion of our Seattle property. These are the only cases that occur to me now where the property has a higher value for railroad purposes than any other.

Q. In arriving at the values of the gravel-pits which are included in schedule 9 for the states of North Dakota, Montana, Idaho, Washington and Oregon, what, if anything, did you add

to what you started out with as the market value to make the railroad value?

A. My recollection is that I followed exactly what I did in Minnesota; I added nothing.

Q. Taking the properties at Tacoma, what did you add to what you found the market value, to make up the valuation which you included in this schedule Exhibit 9?

A. We added nothing.

Q. You added nothing in that case for buildings that would or might have been built there, if it were not owned by the railroad?

A. No sir; the reason for that is this: that property at Tacoma is on a tidal flat, buildings could not have been put there until it was filled in. We purchased it when it was a tidal flat, before it was filled, filled it ourselves, so that it was impossible to conceive of any buildings being there. Our valuation in Tacoma was largely based on what we knew the Chicago, Milwaukee & St. Paul Railway Company and the Oregon & Washington Railway Company were paying for the properties that they were then purchasing for a similar purpose to ours, and that same kind of property, tidal flat property.

Q. Do you know whether the valuation you have included that at in this Exhibit 9 is greater than what the tidal flat originally cost the Railroad Company and what it cost it to fill it in?

A. I know it is greater.

Q. Do you know how much greater?

A. I do not.

Q. Did the cost of purchasing it and filling it in enter into this valuation fixed by you and carried into schedule 9?

A. No, sir; this schedule 9 is made up on the basis of my judgment as to what the property would cost if purchased June 1, 1908.

The MASTER: After filled in?

WITNESS: After filled in.

Q. In arriving at the figure or valuation for this Tacoma property which you carried into Exhibit 9, you did not take into consideration what the property had cost the Railroad Company?

A. No, sir.

Q. With reference to the Seattle property, what, if anything, did you add to its market value for buildings or improvements that would have been on it in case it had not been owned by the Railroad Company?

A. Nothing.

Q. What was the character of that property?

A. The greater part of it is a tide flat that has been filled in in part, and we made our valuation there ignoring entirely any severance damage or possible improvements; simply what the land was bought and sold for in that vicinity.

Q. I suppose that the Company or its predecessor had purchased that, I mean either the St. Paul, or the Northern Pacific Railway Company, or its predecessor the Northern Pacific Railroad Company, had purchased that Seattle land when it was a tide flat or substantially all a tide flat?

A. Yes; some of the property had been partially filled; perhaps some of it entirely filled before we bought it. I do not remember exactly about that now.

Q. But in fixing the valuation for the Seattle property which you carried into this Exhibit 9, you did not consider nor take into account what the property had originally cost the Railway Company or its predecessor the Railroad Company?

A. No, sir.

Q. I find here on this Exhibit 9 a notation, "1" opposite Montana. Will you please explain the purpose of that notation or the reason for making it?

A. The Railway Company is constructing a new line following the Missoula river from St. Regis to Paradise, a distance of 20.25 miles. That right-of-way has recently been purchased, not

entirely completed yet, and I made that notation to explain that that mileage was included in the miles of main track, knowing that other officers of the company would probably present statements covering other parts of the testimony to be given in this case and would show a different mileage, as they might not include it. It includes the right-of-way actually acquired, but the line only being under construction they probably would not include it in their mileage, but it was necessary that I should include it in mine in order to get the proper divisor.

Q. I notice opposite Idaho and Washington figures referring to somewhat similar notations on the exhibit. You may state the reasons for those.

A. The reasons are the some as I have given in the case of the new line from St. Regis to Paradise, excepting that in the notation marked "3" opposite Washington, covering the new line from Tacoma to Tenino, construction has not yet actually been commenced on that. We are trying to buy the right-of-way.

Q. As I understand it, however, the properties referred to in these notes 1, 2 and 3, as well as all the property carried into the valuation in the states of Montana, Idaho, Washington and Oregon, stand in the name of the Northern Pacific Railway Company, and not in the name of subsidiary companies?

A. That is correct, excepting the line shown on notation 2, Idaho, Nez Perces and Camas branch; my recollection is that that branch is being constructed by the Clearwater Short Line Railway Company, a corporation of which the Northern Pacific owns all of the capital stock. I am not positive as to that, but I think likely that I am correct that it is being constructed by that company in the name of that company. That company is somewhat of a paper company; it does not operate the lines. The Northern Pacific operates them but I think the title to the lines is held in its name.

Q. I notice here Minnesota & International Railway Company 1911.94 acres at a valuation of $95,597.25. The title to all

that property included in that valuation stands in the name of the Minnesota & International Railway Company, doesn't it, and not in the name of the Northern Pacific Railway Company?

A. That is correct.

Q. And it is explained at the foot of this schedule, the Northern Pacific Railway Company's interest in that is that it owns seventy per cent of the capital stock of the railway company?

A. That is correct; and the figures both as to the acreage and value you will observe are for seventy per cent of the total. I might add that the Minnesota & International Railway Company made its own report to the State of Minnesota, the same as all the railroad companies did, and these figures you will find are seventy per cent of what they reported.

Q. And you took this valuation from their report?

A. From their report, yes. I supervised the making of that valuation. One of their engineers, made up the figures under my direction, came down and consulted with me about it, so that I am willing to assume the responsibility that that valuation is mine. That is the one made to the State and from which this one is copied.

Q. But they were made up upon the same basis as the Minnesota values of the Northern Pacific Railway properties?

A. That is correct.

Q. The Big Forks & International Falls Railway Company, 370.73 acres, at a valuaton of $48,391.81 is not owned at all (that is, the property itself) by the Northern Pacific Railway Company, the interest of the Railway Company in that property is its ownership of the stock in the corporation?

A. That is right.

Q. I note here that you say the valuation given here is the actual cost; what do you mean by that?

A. That right-of-way was purchased within the last two years; therefore we knew exactly what it had cost, and the cost

of buying it to-day would probably have been the same, so I just used the actual figures in that case.

Q. Then that was what was actually paid for the right-of-way?

A. That is correct.

Q. I notice the next item, Washington & Columbia River Railway Company, a valuation of $371,200, and a notation that the Northern Pacific Railway Company owns all the capital stock of that corporation. I assume from that that the title to the property carried into this Exhibit 9 at that valuation stands in the name of the Washington & Columbia River Company?

A. That is right.

Q. The only interest which the Northern Pacific Railway Company has is its ownership of stock in that corporation?

A. That is right. I think you will admit that that is a good substantial interest.

Q. Well, it depends on how heavily it is bonded, I should say. There is a feeling by a good many people that sometimes it does not amount to much. On what basis was that valuation made up?

A. Precisely the same as the property of the Northern Pacific itself in the state of Washington, made at the same time and in the same manner.

Q. As to the Port Townsend Southern Railway Company, 461.16, acres, a valuation of $75,204; I suppose that valuation was made up in the same way as the valuations for the Northern Pacific lands in the same state?

A. That is correct.

Q. And the only interest of the Northern Pacific Railway Company in that is its ownership of the stock of that corporation, as shown in the notes?

A. That is right.

Q. As to the Missouri River Railway Company, 1831.41 acres, a valuation of $25,143.38; was that valuation made up

the same as the Northern Pacific properties were valued for this schedule in the same state?

A. Oh, no, not at all.

Q. Explain that.

A. The notation shows that this is the actual area and the actual cost. We are buying that right-of-way now; have not commenced construction; it has all been bought within a year, what we have bought, so that I put in the actual figures.

Q. And the interest of the Northern Pacific Railway Company in that is that it owns all of the stock of that corporation?

A. That is right.

Q. I find here you have included the Duluth Union Depot & Terminal Company, $420,625; the title to that property is not in the Northern Pacific Railway Company?

A. No, it stands in the name of the Duluth Union Depot & Terminal Company.

Q. That valuation is not included in the valuation of $25,362,383.41 given for Minnesota, is it?

A. No, sir.

Q. In what way did you arrive at this valuation of $420,625?

A. That figure was made up precisely the same as I made up the figures for the Duluth property of the Northern Pacific Railway Company, and at the same time.

Q. The last item on this schedule Exhibit 9, is Gray's Harbor and Columbia River Railway Company, $247,462.69. On what basis was that valuation made up?

A. That, also, is a new line which we contemplate constructing, and which we are now purchasing the right-of-way for, all that has been purchased having been so purchased within a year; therefore I used the exact figures, the actual cost.

Q. The title to none of that property is in the Northern Pacific Railway Company, but in the other company, the stock of which the Northern Pacific owns?

A. That is correct.

Q. Referring again to this Exhibit 9, the valuations here do not include anything for coal properties which are used to furnish coal to the railway company?

A. That is correct; they are not included on Exhibit 9 at all, none of the coal property.

The MASTER: For that valuation we take the statement you made in your direct testimony of $50,000,000 as I recall?

WITNESS: Yes, sir.

Q. I call your attention to Complainant's Exhibit 11. Your testimony with reference to this exhibit apparently was intended to develop the fact that there was a large saving to the Northren Pacific Railway Company arising from the fact that it owned its own coal properties?

A. That is correct.

Q. You testified that a portion of the coal produced at these mines, Red Lodge, Chesnut and Roslyn, were sold to private consumers, but most of it to the Railway Company?

A. Yes, sir; the exhibit itself shows that eighty-five per cent was used by the Northern Pacific and fifteen per cent was sold commercially.

Q. The average price for the year or the time specified in Exhibit 11 for all the coal sold, including that sold to the Northern Pacific Railway Company and that sold to private individuals, was $2.65 a ton?

A. I testified to those figures, I haven't them in front of me now.

Q. I guess it was $2.15 a ton.

A. I gave the two figures, the price at which the coal was charged to the Northern Pacific Railway Company, and the price at which it was sold to outside parties in my testimony.

Q. You testified, as I recall it, that the price charged the Northern Pacific Railway Company, during the period covered by this exhibit for coal, was $1.97 a ton?

A. I gave it exactly. It was about that. I do not recall the exact figure now.

Q. Well, I would like to have you refer to your figures and tell us what was the highest price at which coal was sold to others than the Northern Pacific during that period and what the lowest price.

A. I haven't those figures with me. All that I brought was what I was requested by you to furnish.

Mr. HOW: It was the price at which the coal was sold to the Northern Pacific during the period and the price at which it was sold to outsiders.

WITNESS: I took the average in both cases; I didn't attempt to take the detail. I don't know that we have the detail in St. Paul of the innumerable sales. They make their reports showing just the average of the commercial sales and of the sales to the Railway Company.

Q. And you don't now remember the average of the sales made?

Mr. HOW: You can find it in his testimony.

Mr. DURMENT: I suppose we can.

A. No, I don't remember it. It was in the testimony day before yesterday.

Q. Can you give us the maximum and minimum of the prices at which commercial sales were made during that period?

A. I cannot.

Q. Do you know what was the average quantities in which commercial sales were made during that period?

A. I have no idea.

Q. Were the prices you have given here for coal free on board the cars at the mines?

A. That is right.

Q. You placed a valuation of $50,000,000 upon these coal properties, as I remember it; that is, that they could not be

acquired at this time if you did not now own them, for less than $50,000,000?

A. I didn't say that, I said that was their value to the Northern Pacific Railway Company.

Q. Well, on what do you fix that value to the Northern Pacific Railway Company?

A. On a number of factors: to some extent upon the capitalized value of the saving that results to the Railway Company because of that ownership. The principal item making up that value is the Roslyn coal-fields. If the Northern Pacific Railway Company was offered forty million dollars for that coal-field, it could not afford to sell it. I am talking now of only one field, remember, the Roslyn coal-field. It is incapable of reproduction It is the only coal, as I testified yesterday, between the Cascade mountains and the Belt range of mountains, a distance of nearly eight hundred miles. If the Company did not own that field, (and I may say here that it owns, I should estimate, 98 or 99 per cent of the area, there is a small portion that it does not own, comparatively small), it would have to pay the price that the owner chose to charge, which price would doubtless be determined by him on the basis of what it would stand. What it would stand would, of course, be the price at which it could procure another coal in its place. The only other coals that are possible as a substitute for the Roslyn coal-field are the western Washington coals, the Wyoming coals and the Crow's Nest district, in Canada. I have explained in Exhibit 11 why western Washington coals are not available. The western Washington coal-fields are inadequate to take care of western Washington to-day. The Wyoming coals would be more expensive than the Crow's Nest, therefore we must figure on the Crow's Nest coal, that being the cheapest available substitute. That substitute, as I have shown on Exhibit 11, would cost the Northern Pacific Railway Company two dollars per ton more than the Roslyn coal costs, which, on the basis of the amount of Roslyn coal con-

sumed by the Northern Pacific last year, means $2,491,968. That is the amount saved to the Northern Pacific in that one year by its ownership of the Roslyn coal-field.

Q. In your opinion, could the Northern Pacific Railway Company's Roslyn coal-fields be sold to-day for $40,000,000?

A. I have no doubt the Chicago, Milwaukee & St. Paul Railway Company would be glad to purchase that field at that price.

Q. Could the other coal-fields be sold to-day for the additional ten million dollars which would make up your valuation for the whole lot?

A. Yes, in my judgment they could. The Chesnut coal-field is, to some extent, like the Roslyn, (a much smaller field, however), but its location is particularly favorable for the Northern Pacific, saving a long haul on any other coal which could be substituted for it. The result is that I show in my statement Exhibit 11 a saving from using the Chesnut coal of $2.48 per ton, which, for the amount of Chesnut coal used by the Company last year, made a total saving of $147,408.72.

Q. When and how did the Northern Pacific Railway Company acquire the Rosyln coal-fields?

A. Approximately one-half of the Roslyn coal-field was a part of the land-grant of the Northern Pacific Railroad Company; therefore, the Company did not have to purchase that half. The other half it acquired between the years 1886 and 1894 by purchase from parties who had taken up the land under the coal-land laws of the United States.

Q. Have you here the figures which will show the actual price paid to these persons from whom it purchased the half of the Roslyn fields?

A. I have not.

Q. Are they available in the office of the Railway Company, Complainant?

A. I could not say. I have had no occasion to ever look that up, and at one time that property was carried in the name of

the Northern Pacific Coal Company, a company which is not now in existence. I am not sure where its records are, so I could not say whether I could get that information or not.

Q. But they have been carried always for the Northern Pacific Railway Company or the Northern Pacific Railroad Company?

A. Oh, yes.

Q. And were acquired for one or the other of those Companies?

A. That is right.

Q. The title to that land is now in the Northwestern Improvement Company, is it not?

A. The Roslyn coal-field, yes.

Q. Now, take the Chesnut field: when and in what manner was that property acquired for the Northern Pacific Railway Company or its predecessor the Northern Pacific Railroad Company?

A. A small portion of the Chesnut field was a part of the land-grant of the Northern Pacific Railroad Company—not one-half of it, as in the case of the Roslyn fields; the remainder was purchased from two or three different parties, at different times, a considerable number of years ago, I think about 1900 perhaps.

Q. The title to this Chesnut coal-field is in the Northwestern Improvement Company too, is it not?

A. That is right.

Q. But the properties were acquired, and have always been held for, the Northern Pacific Railway Company or the Northern Pacific Railroad Company?

A. That is right.

Q. Take the Red Lodge Montana coal-fields: When, and in what way were they acquired by the Northern Pacific Railway Company, or the Northern Pacific Railroad Company, or for one or the other of those companies?

A. In the case of the Red Lodge property there was no land-

grant property, for the reason that it is located upon the Crow Indian reservation; therefore the Company got no part of it as its land-grant. The Company acquired that by purchasing the stock of the Rocky Fork Coal Company. It purchased that stock at various times until it ultimately acquired all of it. That purchase went on for quite a number of years, and I should say, off-hand, that we have owned all of the stock for probably five years now.

Q. Does that stock stand in the name of the Railway Company, or the Northwestern Improvement Company?

A. The title has been transferred from the Rocky Fork Coal Company to the Northwestern Improvement Company after we acquired all of the stock.

Q. I suppose you have not here now the figures showing what it cost to acquire the stock in that Rocky Fork Company?

A. No, I never knew that.

Q. Nor the figures to show what it cost to acquire the Chesnut field which was not included in the land-grant?

A. No, sir.

Recess until 2 p. m.

AFTERNOON SESSION.

RE-DIRECT EXAMINATION.

By Mr. How:

Q. There appear to be some differences between your statement of present cost of purchase of the real estate of the Northern Pacific Railway Company situated in the State of Minnesota rendered to the State and that offered by you in this case. Have you prepared a statement showing what those differences are?

A. I have.

Q. Will you produce it, please?

Statement produced by witness and marked Complainant's Exhibit 12—Cooper.

Q. It appears from this statement, Exhibit 12, that you have added $556,462.95 to the statement rendered to the State of Minnesota for property since acquired. Is that an accurate statement?

A. That is an accurate statement. The detail of the St. Paul terminal item is shown in Exhibit C—Cooper, and of the Minneapolis item I am preparing a statement, at the request of the defendants' counsel, which I will have this afternoon, showing the detail of the Minneapolis charge.

Q. There appears in this statement, Exhibit 12, under the head of "Increase in difference between Market Value and Value for Railway purposes" a total of $1,257,153.55, composed of increases, respectively, for Duluth, St. Paul and Minneapolis terminals. Will you explain the basis and cause of that increase?

A. After completing the valuation for the state, I considered at various times the figures that I had included in that valuation as to whether I had got them about right or not, and concluded that as to the terminal property I had not added a high enough percentage covering the difference between market value and value for railway purposes, as those two terms were defined by the State. For that reason, in preparing my testimony for the Spokane rate case and this case, I concluded to increase those percentages in the three cities, and did so to the extent I have named. I was satisfied that in Duluth, especially, the percentage which I had used in my figures to the State was entirely too low, that the Company's property in Duluth, according to the extent of it and its location, was such that if not used by the Company for railway purposes, it would undoubtedly be covered and used for elevators, jobbing houses, business blocks, industrial purposes, all of which would have to be purchased in order to clear the ground for its use for railroad purposes, and that my previous percentage was entirely too low. For that reason I increased it as shown on the exhibit we are now considering. For the same reason, but to a lesser extent, I increase

the St. Paul terminals and the Minneapolis terminals. I am satisfied now that my figures which show a difference in the entire State of Minnesota between market value and value for railway purposes, as we term it, amounting to forty-four per cent, is reasonable and conservative.

Q. The figures for the Duluth terminals (that is, figures of increase for Duluth terminals) over the statement rendered the State are $843,639.98; for the St. Paul terminals they are $219,684.57; for the Minneapolis terminals they are $193,829. Will you state what your judgment is with regard to the reasonableness and propriety of that increase over the estimate rendered the State?

A. My judgment is that the increase was fully warranted, that it is conservative and moderate.

Mr. HOW: I think that the material figures in this exhibit are in the record, and that inasmuch as the exhibit is largely matter of repetition, I need not offer it.

Mr. DURMENT: Well,—

Mr. HOW: You may offer it if you want to. There is nothing in it except what he has testified to.

Q. In making your estimate with regard to market value (and I speak particularly of the terminals) you were assisted by the judgment of prominent real estate men, whom you have named in your direct examination, in the respective cities that you indicated there. Will you state on what basis you estimated when you finally did make the estimate yourself, the market value of the respective tracts included within your terminals, how you determined that market value?

A. The market value was determined by the prices at which property abutting was being held or had been transferred from one purchaser to another, excepting that we took into consideration this fact, that in determining the market value of such large areas as the Company owns we had to bear in mind that it could not purchase to the same advantage as a business man

looking for a location for a business block or some one looking for a location for an industry. They had a choice of the location they were not obliged to buy any particular piece of property, they could buy the property that answered their purposes that was the cheapest. A railway company buying a terminal yard as extensive as the yards of the Northern Pacific cannot pick and choose the property that it will acquire. There will be some of the property that it acquires that it can purchase perhaps at a quite reasonable figure some that would be a reasonable figure, some that is not on the market at all and where the owner can only be induced to part with it by paying a very high price; therefore, the price at which a railway company can purchase a large tract of land such as it needs for terminals, must necessarily be estimated on the basis of the maximum or highest price at which the adjoining property is held.

Q. I understand from you that there is no such thing as competition among the sellers to a railway company?

A. None whatever, a railway company has no choice; it must have its right-of-way, it must have its terminal grounds, it must have its station grounds where the topographical and other conditions dictate, and the officer who is charged with the duty of buying this property has no choice but to buy the property where in the judgment of the engineers the Company should have its right-of-way and its station grounds or terminal grounds.

Q. That applies to the right-of-way, then, as well as to the terminals?

A. That applies to the right-of-way as well as terminals.

Q. Will you state to what advantage and for what purpose the Northern Pacific Railway Company uses the Northwestern Improvement Company for the purchase of properties?

Mr. DURMENT: We submit that the question is improper to the extent that it calls for a statement of "to what advantage." To what extent or in what way it does use it, might be perfectly proper, but the question of the advantage is a mere matter of

opinion or conclusion which should be drawn not by the witness but by the Master or the Court.

Mr. How: I will stand on the question.

The MASTER: Objection noted.

A. In purchasing terminal properties,—and the only properties that the Improvement Company has purchased for the Railway Company have been terminal properties,—we have to anticipate when we start to purchase that we will probably and in most cases have to purchase more property than we require; the ownership is such, frequently, that a man will not divide it, he insists that we must purchase all that he has; we cannot always disclose what our purpose is in purchasing because that will increase the price on us; therefore, we frequently purchase more property than we actually require—have to. That property is surplusage and we afterwards dispose of it. To facilitate the disposition of it we leave the title to that in the name of the Northwestern Improvement Company. The Northern Pacific Railway Company has two mortgages on its property. Before it can sell property it must be released from these mortgages, which is a somewhat cumbersome proceeding; the transaction has all to be explained to the trustees under the mortgages; the board of directors must have a meeting and pass a resolution requesting them to release the property, and all together, there is a great deal of red tape connected with it. But by holding the title to this surplus property in the Improvement Company, taking it there in the first place and afterwards holding it there, we are able to sell it without going through all of this red-tape proceeding which would be necessary if the title was taken in the name of the Railway Company in the first instance.

Q. Is there any consideration of possible or necessary change of plans with regard to the completion of your terminals that enters into that?

A. There is a feature there which we have met, where after having decided where we would locate our terminal or where

we would extend a terminal already existing that we have been obliged because of the extraordinary prices asked for the property to change our plans after we had purchased some of it, and for that reason also we prefer to take the title in the first instance in the name of the Improvement Company because we can then dispose of it without going through the red-tape methods necessary to secure releases from the mortgages of the Railway Company.

Q. I notice in one of your exhibits, being a statement of cost of property transferred by the Northwestern Improvement Company to the Northern Pacific Company, an item included of some two thousand dollars, I think, for superintendence, clerical work, etc. Will you explain the nature of that charge by the Northwestern Improvement Company against the Railroad Company?

A. When the Improvement Company is purchasing property, all of the expenses attending the purchase, including the expenses of my office and of myself and of my salary and that of my employes, are all charged against the Improvement Company; I mean that portion of the expense that is proper as representing the time and services rendered in connection with the purchase of the property; that is all charged from month to month as the work goes on, against the Improvement Company; therefore, when the Improvement Company turns around and sells the property to the Railway Company, it includes all of those charges that have been made against it on account of that property, so that the Improvement Company simply comes out whole on the transaction excepting to the extent that it is paid interest at six per cent on its actual expenditures.

Q. On money which it has advanced?

A. Money which it has advanced. Makes no profit, is paid no fee.

Q. At what stage in the proceeding of the acquiring of

several tracts of land to make one tract for terminal purposes does the Improvement Company transfer to the Northern Pacific Company?

A. Generally after all of the property has been acquired. That is our usual rule. We let the Improvement Company carry it along until we have acquired all that we are going to acquire or until we have reached the point at which the purchase of the balance is hopeless and will probably have to be condemned. That stage being reached, the Improvement Company then transfers to the Railway Company all of it that it has acquired that will be required for railroad purposes, leaving any surplus property that it was obliged to purchase for the reason I have explained, standing in its name.

Q. Is there included within your estimate here of the present cost of Duluth, St. Paul, Minneapolis or other terminals, any property which has been acquired by the Improvement Company under the circumstances that you name, that is, through necessity in order to obtain other property? If that question is not clear I will explain that you have testified that sometimes you have to buy property in order to obtain property that you need and that the title to that is left in the Improvement Company. Now, I ask if that has been done in all cases, or whether it has transferred any such property to you.

A. That has been done in all cases. There is no property included in Exhibit 9 that is what you might call surplus property; that is to say, property that we were obliged to purchase that we did not need. We leave the title to all of that in the Improvement Company, and none of that kind of property is included in Exhibit 9.

Q. Will you state what you mean by severance damage?

A. Severance damage is the damage that results to the balance of the property left after we have purchased our right-of-way across any individual's ownership. It varies a

great deal, as will readily be understood. We may cross a man's farm diagonally, cut it in two, cut his fields in two, sometimes cut it in three; or, we may cross his property on a curve, cutting it up badly; or, we may run down one side of his property, in which event the severance damage is, of course, very small; and we sometimes have to purchase, or find it economical to purchase property outside of what we require for right-of-way because we have cut off a small portion of a man's farm and left it to one side, so small that it is not profitable for him to continue cultivating it, and also because the situation may be such that to give him a crossing to reach this detached part of his farm, may be too expensive; therefore, we frequently purchase—

Q. Why need you consider giving him that crossing?

A. The law requires us to provide crossings. We cannot cut a man's farm in two without providing him a crossing.

Q. Either by bridge or culvert or crossing on the level?

A. The crossing may be a grade, or it may be an over-crossing or an under-crossing, and when we purchase these detached strips, having no use for them ourselves, we try to sell them (at a loss of course) to the abutting owner on the other side, hooking it onto his farm. What I have just said as to severance damage has reference particularly to farming property. There is another kind of severance damage which we find to be very expensive; that is where we run across a man's farm between him and a stream cutting him off from the water. There we find a severance damage which is usually very expensive; of course the damage we do to him is magnified, but it is always expensive. In crossing a city property we may cross diagonally, taking parts of the lot, and then we frequently find it cheaper to purchase the entire lot, although we only want a small part of it, because of the way we cut it up. As a rule, in purchasing city property we purchase entire lots, then when we have to condemn, we only

condemn the portion that we absolutely need. That, I think, covers the severance damage.

Q. You spoke, in answer to a question by the Master, of a meeting of land agents and right-of-way agents of various railway companies held at your office; representatives of what companies were present at that meeting?

A. There were representatives of the Great Northern Railway Company, the Great Western Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Wisconsin Central Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Soo Railway Company, the Minneapolis & St. Louis Railway Company, the Rock Island Railway Company, and the Northern Pacific Railway Company.

Q. I think you testified that at that meeting it was agreed among those present that a multiple of 3 was reasonable to be used in determining the present cost of purchase of right-of-way for a railroad company. Will you state how that agreement was reached and upon what it was based?

A. It is perhaps saying too much to say that it was an agreement. We had that meeting because of having been called upon by the State to make the valuation of our properties. The State called upon us to divide our right-of-way and other property under two headings, the market value and right-of-way value. We thought it best that we should have a meeting to make sure that we all understood alike what the State wanted. I had made some inquiry personally of the State engineer to make sure that we had the proper understanding, and, in fact, while the meeting was being held in my office, I had some telephone conversation with Mr. Morgan, the State engineer about it, as I found some of the other railroad representatives had a different idea. We finally got it straightened out and got to a correct understanding of what the State desired. We then took up the question and had a general dis-

cussion as to what percentage we should use to determine this difference. Each officer stated his experience. Some of the companies, having lines in southern Minnesota, in a highly cultivated country, thought that the multiple should be about 4. My recollection is that some thought that 4 was too low; others again, going through a somewhat inferior country to that, thought that 3 would be about right. We all agreed that a lesser multiple should be used where we were going through a country that had not been, or had been very little, developed, and the concensus of opinion among the gentlemen who were there was that an average multiplier of 3 would be about right, taking the highly developed land and the poorer land together, and that that multiplier also could be applied in the smaller villages and towns but that when we reached the larger towns and cities a lesser multiplier would necessarily have to be used because of the higher value of the property, and there was no understanding as to what multiplier should be used in the cities, and larger towns, that being left to the individual judgment of each officer in making up his report; nor was anyone tied up by anything that was said or done at that meeting as to what multiplier he should use; we were simply, you may say, exchanging experiences.

Q. I did not mean to be understood that you agreed that you should use a certain multiple but only whether or not you agreed that a certain multiple was reasonable to use in certain circumstances. Now, referring to Complainant's Exhibit 10, being a statement of the right-of-way purchased, can you recollect what, at the time you purchased the right-of-way for line changes between Wadena and Glyndon, you considered the fair market value of the property for which this statement shows you actually paid $268.12 an acre?

A. For the land between Wadena and Glyndon, the farming land there, I think a fair reasonable average of its value would be about fifty dollars per acre. It varies in character,

some of it is better than others. We paid as high, if I recollect right, at Dilworth, as seventy dollars an acre; and some of it is decidedly inferior and would probably go down to as low as thirty dollars per acre. I think, taking the whole district through there, fifty dollars per acre is a fair average, without of course including any severance damage, damage to improvements, or anything else, just simply buying a farm in bulk.

Q. Can you remember what you considered the fair market value of property through which you bought the right-of-way for line changes between Alto and Berea, North Dakota, and which you appear to have paid $95.13 per acre for?

A. There was some of that property that was pretty poor. The line changes that I speak of run from the summit on one side to the summit on the other, the line itself crossing the valley of the Cheyenne river, and the land on the summits which would be at Alto and at Berea, those being the respective ends of the line, is pretty poor stuff. There was some of that land, also, that was badly cut up by the Cheyenne river, which detracted from its value. Also we bought a very wide right-of-way there which decreased the severance damage very decidedly. I think in part of that line, because of the high embankment, we had to have a right-of-way 250 feet wide. Also, there is included in that a solid chunk of land that we bought to make a change in the channel of the Cheyenne river, so that the severance and other damages in that case (it was a peculiar case) was very low, for those reasons. My recollection is that the average value of the land there would probably be about fifty to sixty dollars per acre—No I have got that too high, there was some of it that was very good land in the Cheyenne river valley, but there was some of it very poor on both sides of the line, I think forty dollars per acre would probably be a fair average for all of it.

Q. Can you remember what, at the time, you considered

the fair market value per acre of land through which you purchased your right-of-way for line changes between Garrison and Missoula, Montana, and for which you appear actually to have paid $378.15 per acre?

A. The land we are speaking about is in the valley of the Hell Gate river, a narrow valley well up in the mountains. We never thought it was as valuable as it proved to be after we commenced purchasing this land. I should have thought, prior to that time, that forty dollars per acre was a stiff price for it, but before we got through with our condemnation proceedings, I had more respect for it, but I never could get myself up to believing that the average value of the land in that valley would exceed fifty dollars an acre. I ought to state, however, that there is included in that item, as it appears on Exhibit 10, a right-of-way through the village of Bonner. Bonner is six miles east of Missoula, Montana.

Q. How many people are there there?

A. Oh, perhaps 100, I don't think there are any more. Our line hit two saloons. We condemned those saloons, we could not agree with the owners, we had offered them what we felt was a big, stiff price, in one case $3,000, in the other $4,000,—the lots were probably worth $100 each, and the buildings worth perhaps $1,500 to $2,000—and the jury gave one man $21,000 and the other $14,000. The intelligent jury were instructed that they must not take into account the fact of the profits that this man was making on his business, also the fact that he might not be able to get another location in Bonner because the rest of the townsite was owned by a milling company that did not want saloons there and would not sell lots for that purpose; but it was quite apparent that the jury ignored the instructions of the Court, for they gave him an award based upon the profits he was making in the saloon business. I mention that as showing what a railroad company has to encounter occasionally. But eliminating that,

and making a proper allowance for that particular case, out of those figures and for all the property that we acquired through Bonner, my judgment is that we paid for our right-of-way between Garrison and Missoula five times its value. By that I mean that in that case the multiplier should have been about 5 instead of this joint multiplier of 3 that we have talked about.

Q. Can you state, briefly, what in your judgment the market value was for the line change between Vancouver and Kalama, for which you appear to have paid $137.30 per acre?

A. There is another peculiar case which requires some explanation. We have a railroad between Vancouver and Kalama and all that we are seeking to do is to straighten it out, and practically all of the new right-of-way we bought was a widening out of what we already owned, so that there was no severance damage to the owner, the severance already existed. Some of that land is very good land, near Vancouver, land on which they raise prunes; some of it, down towards Kalama, is very poor. I should think that land would average about $60 an acre.

Q. But there was, you say, no severance damage?

A. There was very little severance damage; I should think at least ninety per cent of what we acquired was widening out our existing right-of-way.

Q. What multiple do you think you used in purchasing your right-of-way between Belknap and Tuscor, for which you appear to have paid $94.01 per acre?

A. We are building a new line there between Belknap and Tuscor, following along the Clark's Fork river, for the purpose of eliminating some objectionable grades. It is timbered land but we run across some places that have been cleared and being farmed in a kind of a fashion, and we were held up "to beat the band". I had no time to condemn; the engineers did not complete the work of running the line until the con-

tractors were about ready to begin, and I simply had to go in there and send a man in there and get through as cheap as I could without much time for negotiating. I do not believe that that land is worth, on an average, to exceed twenty dollars an acre, I think I have got that high at twenty dollars an acre.

Q. What multiple do you think you used in purchasing the new line from Paradise to St. Regis, Montana, for which you appear to have paid $38.49 per acre?

A. That line runs through a timbered country entirely, excepting at St. Regis, where we leave our present existing line. There we crossed one very good farm, the rest of the line was in the woods, and what we paid for the right-of-way was largely the value of the timber that we were destroying. That line you cannot compare with anything, it is somewhat unique; no railroad has ever been through that country before, and, as I say, it is in the woods all the way. We paid over one hundred dollars per acre for one piece of good farming land on the line. The Big Blackfoot Milling Company owned a considerable part of that right-of-way and they sold us the right-of-way at a dollar per acre for the land, plus two dollars per thousand for the timber.

Q. And that is what decreased the price?

A. That is what brings that away down, yes; that line was quite peculiar.

Q. What have you to say with regard to the new line from Cul de Sac to Grangeville, for which you appear to have paid $149.90 per acre? I think they are all about alike, are they not?

A. Well, no, that new line from Tacoma to Tenino is a unique line, you will see what it costs there.

Q. Yes, but weren't there a great many buildings that you encountered there?

A. Yes.

Q. Then I want to take that up in another connection, that was why I left that out.

A. The line from Cul de Sac to Grangeville crosses the Nez Perce and Camas prairies, very good wheat country. A part of the line, however, crosses some canyons where the country is poor. For the good land, I should think fifty dollars per acre would be about right,—it is very good wheat land up in that country.

Q. And what did you have to pay for it?

A. We paid $149.90, which would be a multiple of 3.

Q. I mean for the good land.

A. Oh, for the good land? You mean including the damages to improvements, and so on?

Q. Yes.

A. Oh, well, there is some of that land for which we paid three or four hundred dollars an acre. We hit some improvements along that line pretty bad, which raised up the price on us. On that line my judgment is that the multiplier of 3 would have been about right.

Q. What multiple did you people apply along the line from Spokane to Portland, excluding the terminals, for which you appear to have paid $264.60 an acre? Just state, briefly, what average multiple you think had to be applied there.

A. About 10. That was a very hard case. The country from Spokane to Pasco is a very poor country; the average value of that land should not exceed fifteen dollars an acre. Then after leaving Kennewick you go through some irrigated land for a distance of about fifteen miles, where the land is very valuable, $100 per acre would probably be a fair price for it. You get beyond the irrigated district, and following along the north bank of the Columbia river you are in an arid country, where it is impossible to raise crops,—very sandy, very poor stuff; oh, five dollars per acre would be high. Going along farther down, passing through the break in the Cascade

mountains you get into a better country, a country of greater moisture, and a country where crops are raised, and as you get to Vancouver it is a very good country, a country where the land would be worth $100 per acre. Take it on that whole line, I believe a multiplier not of 10, as suggested (that is too high) I think a multiplier of 6 would be warranted. There was a case such as I have spoken of, where we had to confront that severance damage, which comes from cutting a man off from the water, following as we did the Columbia river for 230 miles, between him (the owner) and the river, and that, of course entered into this and raises the multiplier.

Q. Will you give some examples, if there are any, in your recent experiences, with regard to running into improvements to enhance the cost of purchasing right-of-way?

A. The line from Tacoma to Tenino, referred to in Exhibit 10, illustrates what you have asked me. That line runs along the shore of Puget Sound for a distance of 25 miles, approximately, then goes inland for a distance of fifteen miles more, its total length being approximately forty miles. Along the first ten miles out of Tacoma we cross property occupied by two saw-mills, one of which asked five hundred thousand dollars for the right-of-way,—we have offered them fifty thousand dollars; one ship-building yard—for which we paid $60,000; two shingle mills—that we have not been able to purchase yet; two brick-yards,—that I paid $80,000 to; the Tacoma Smelter property—that was very decent with us and let us go through without charge, but we had to tunnel under their property; then we struck a summer hotel, took off the porch of it, and I paid $17,000 to the owner to settle that damage; we ran through several gravel deposits, that are very valuable in this way; they face on Puget Sound; the cities on Puget Sound, Tacoma, Seattle and others are growing very rapidly, there is a large amount of building being done, a large amount of street work and concrete work, which in turn

requires a large amount of gravel; this gravel is sluiced down from those banks into barges, hauled to Tacoma, Seattle, and those other places where the gravel is used; it is a very profitable business and the result is that that gravel is worth so much a yard in place there. We do not know how much we will have to pay to get through there; we have made no settlement with them yet; we have been trying to get them to put a price and they have been reluctant to do so. We run through the village of Stillicum—a very pretty little village, an old place, right on the shore of Puget sound,—and we have bought, I should say, ten dwelling houses there already, and have about 12 more to buy; all of them have cost us a lot of money, I offered for one little cottage eleven thousand dollars, the man wouldn't take it, and we have not settled with him yet. It was a very pretty place, that is, pretty in the sense that it had beautiful flowers and trees, cherry trees. After leaving Stillicum we meet no unusual features excepting that the property is owned by people who have an exaggerated idea, we think, of its value, and they all want two or three prices for it. It has been a most difficult piece of work buying that right-of-way. We have only bought a portion of it so far. We started in to condemn to see how we would come out. We condemned one piece, which our witnesses testified was worth from fourteen hundred dollars to twenty-five hundred dollars, the average of the testimony of our witnesses being abou o thousand dollars. The testimony of the owner and his witnesses ranged from ten thousand dollars to thirty thousand dollars, the average of his testimony was fourteen thousand dollars. The intelligent jury took the fourteen thousand dollars average of their testimony, added to it the two thousand dollars average of our testimony, and gave them $16,000,—they evidently forgot to divide it. In the case I speak of the verdict was so outrageous that it was set aside by the supreme court, a new trial was ordered, and it has not been had

yet. This illustrates what may happen to you in a condemnation proceeding, and it has scared us so that we have been afraid to make a move since, we have been letting it drift along hoping that public feeling would change somewhat in that country, that they would get over these boom ideas, and that we would get something nearer fair play by waiting.

Q. Mr. Cooper, you have served in various capacities for many years with the Northern Pacific Railway Company, all the way from clerk in the construction department to general manager, and now land commissioner; have you an opinion as to whether the right-of-way and other real estate, exclusive of the land-grant and coal properties of the Northern Pacific system, are fairly and reasonably worth the amount of your estimate as contained in Exhibit No. 9 to the Northern Pacific Railway Company, or to any other railway company that desires to engage in the transportation business between Duluth and St. Paul and Minneapolis, on the one hand, and the Pacific coast cities on the other, including the whole system with its branches?

Mr. DURMENT: When you exclude the land-grant and the coal properties you do not mean to exclude those portions of the right-of-way or other property used in the operating of the road now and which were originally part of the land-grant or were granted by it?

Mr. HOW: No.

Mr. DURMENT: But simply the land-grant which was not used in the operation of the road?

Mr. HOW: That is right.

WITNESS: The property in Exhibit 9.

Mr. HOW: I refer exclusively to the property described in Exhibit 9.

The MASTER: The right-of-way and operating property.

Mr. DURMENT: We object to that as immaterial and as including a large part of the property which appears by the

witness' own testimony in this exhibit in question not to belong to the Northern Pacific Railway Company nor to be properly considered in this proceeding.

Mr. HOW: The property that does not belong to the Northern Pacific Railway Company, I shall show by another witness, is all owned by other companies which are promoting projects of the Northern Pacific Railway Company.

The MASTER: I understand.

Mr. HOW: It is apparent to everybody why the Northern Pacific does not own it,—it cannot finance it.

Mr. DURMENT: That is apparent from his testimony, I think, already.

The MASTER: Objection noted. Answer.

A. My answer is that that property, the property described on Exhibit 9, is worth the figure that I have said as the cost of purchasing it, and a great deal more, to the Northern Pacific Railway Company or any other railway company.

Q. Will you give what you consider your justification for that opinion?

Mr. O'BRIEN: We object to that as not being the proper basis for arriving at the true, fair and reasonable value of the property, and it is therefore incompetent and immaterial.

The MASTER: Objection noted. Answer.

A. Of the total of 108 millions shown on the statement, approximately 75 millions are in the important terminals described. I say, and I say it with some knowledge, that there is no railroad company in the United States better fixed, and few of them as well fixed, as the Northern Pacific, in that very important part of the transportation machine,—its terminals. Its terminals are not only large but they are excellently located; wherever they are, they are the best. We have the best terminals in St. Paul; by far the best in Duluth; by far the best in Superior; the best in Fargo; by far the best in Spokane; and there is nothing to compare with our terminals in

Tacoma or Seattle. The experience of the railroad companies of the United States last year showed the importance of adequate and ample terminals. The paralysis that there was in the movement of freight was largely the result of inadequate terminals to handle the business. That trouble did not exist with the Northern Pacific. Its difficulties (its limitations I should say) in moving business was its single track. Therefore, keeping in mind always the value to a railway company of adequate terminals, ample for the purpose, located convenient for economical operation and convenient to shippers (which of course means in turn that you get more business) I say that the Northern Pacific terminals are immensely valuable to it and that that money that I have put there does not represent its true value as a part of the transportation machine. What I say about the terminals holds good to some extent for the right-of-way, for the same and for other reasons; that is to say, when I have grouped the terminals there, I have only enumerated what might be called the larger ones, the line terminals and the water terminals and some of the interior terminals. But take a town like Fargo, the Northern Pacific has a position there which gives it more than its share of the business, measured by the number of railroads that enter Fargo. There are three railroads there, and while I have not the exact figures or any figures, I am satisfied that the Northern Pacific does sixty per cent of the business of that town; and there is no town where the Northern Pacific is in competition with another railroad that it does not do more than its share of the business, measuring its share by dividing the total business by the number of railroads that enter that town. Therefore, its property, because of its location, has a value as a business getter which is an important and very important factor with the keen competition that now exists. Also, it has a right-of-way in various places that has a strategic value, right-of-way along the rivers, important

rivers, and through the mountains; it had the choice of location, being the pioneer line in the country, and that choice was, in most cases, wisely exercised, taking into account economy of operation and business, the two factors which must govern in the location of a railroad. Therefore I am satisfied that it would be a profitable investment for a new railroad company, if such a thing were possible, to take that right-of-way and operating property over at the price I have put upon it, that it could well afford and it would be profitable, as I say, to take it.

Mr. DURMENT: As I understand the answer to this question, it results in this, that these properties are worth the 108 millions he has put on them there but no more.

Mr. HOW: No, he has not.

Mr. DURMENT: Well, he has said (I have been listening for that) it would be profitable for them to take it over at this figure, but he has not said that they were worth any more than that? I simply want to make it clear that I understand the question and the answer.

Q. What is your meaning? Do you limit the value to this exact sum that you estimate is the present cost to purchase?

A. I am very sure that when I started out in my answer I said that it was worth much more.

Q. I thought you did.

A. But if I didn't, I intended to, and say it now.

Q. Can you state the amount your books show has been paid in the aggregate by the Northern Pacific Railway Company to the Northwestern Improvement Company by way of interest on moneys used by the Northwestern Improvement Company in the purchase of properties which you have testified it has purchased for the benefit of the Northern Pacific Company? I intend to include all the properties purchased by the Northwestern Improvement Company and transferred to the Northern Pacific Company at any time.

A. The total amount is $48,490.15. If desired I will give a list of the properties; they have all been alluded to in the testimony that I have given, but I can repeat it all again if desired.

Q. It is not desired. What is your judgment on the question as to whether the Northern Pacific coal properties would be worth at least fifty millions of dollars to any railroad company which should purchase the Northern Pacific right-of-way and terminals as it now exists?

Mr. DURMENT: We will object to that as incompetent and immaterial and not the proper basis of arriving at the value of the property.

The MASTER: The objection will be noted

A. In my judgment, the coal properties are well worth 50 million dollars to any railroad company who intended to occupy the same territory or approximately so occupied by the Northern Pacific.

An adjournment was here taken until Monday morning, June 22nd, 1908, subject to continuance upon request until Tuesday morning, June 23rd.

On Tuesday morning, June 23, 1908, the hearing was resumed pursuant to notice from the Master.

H. A. GRAY,

Sworn on behalf of Complainant, testified.

By Mr. How:

Q. Will you state your name, your residence and your present occupation?

A. H. A. Gray, St. Paul; Comptroller of the Northern Pacific Railway Company.

Q. What has been your experience in railway accounting

work prior to the time when you were employed by the Northern Pacific Railway Company?

A. I entered railway service in December, 1873, with the Chicago & Northwestern Railway Company, in Chicago, and continued with that Company until the first of April, 1881, when I came to St. Paul as assistant auditor of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and about thirteen months later was made auditor of that company. I continued with that company in that position until the 1st of January, 1886, when I went into the manufacturing business, in Chicago.

Q. And when did you leave the manufacturing business?

A. I left the manufacturing business in February 1897, to take my present position with the Northern Pacific.

Q. What are the duties of the Comptroller of the Northern Pacific Railway Company?

A. The Comptroller has general charge of all the accounts of the Company.

Q. How many employes are there in your department, approximately?

A. About 335, not including the heads of sub-departments; say 340 in all.

Q. And you are the head of the accounting department, and all auditors are subject to you, as I understand it?

A. Yes.

Q. Can you give, briefly, a history of the Northern Pacific system and its construction?

A. The old Northern Pacific Railroad Company was chartered by Congress, in the summer of 1864. Owing to difficulties in raising the necessary money, construction was not commenced until the year 1870. At that time arrangements were made, through the firm of Jay Cooke & Company, of Philadelphia to raise money for construction purposes; and this was done very freely for nearly two years, through the

sale of what were known as 7.3 bonds. After about two years the sale of the bonds began to flag, and, when the panic of 1873 came, the firm of Jay Cooke & Company went down, and the Northern Pacific was in difficulties, which it weathered along until the spring of 1875, when it went into the hands of receivers. It was reorganized in September, 1875, and continued from that time until August, 1893, when it was again placed in the hands of receivers and so continued until September 1, 1896, when it was reorganized, this time not as a continuation of the old Northern Pacific Railroad Company, chartered by Congress, but as under a purchase of the property by a Wisconsin corporation known as the Northern Pacific Railway Company, which has continued ever since.

Q. How long, if you recollect, had agitation been made for the charter, by the Congress, of the Northern Pacific Railroad Company, prior to the enactment of its charter?

A. About thirty years before the enactment of the charter, a Dr. Barlow, I think his name was, in the East, wrote articles for some of the journals in which he advocated the building of such a road, at the expense of the government. The matter was taken up afterwards by Asa Whitney and others—men who spent their time and their fortunes in agitating and seeking to stir up public interest in such an enterprise, men who died poor as the result of their pursuit of this object.

Q. And Whitney was followed by whom?

A. The principal figure after Whitney was Josiah Perham.

Q. He also spent his time and died poor?

A. Yes; he died probably of a broken heart, in poverty, in his son's house.

Q. Can you state, as a matter of history, upon what the promoters of the Northern Pacific Railroad Company depended for funds to construct a road?

A. Josiah Perham, who was the first president of the Company, believed that there was a great value in the land-grant and that enough money could be made out of the sale of lands to build the road, and for that reason I believe he did not, at first, seek any bonded aid or money aid from Congress. He was confident that the road could be built with the proceeds of the sale of lands.

Q. What was the result of that view of things?

A. The result was a complete failure. For some years nothing was done except to try and secure aid from Congress—which was denied—and finally the directors of the Company made up their minds that they must seek elsewhere for the necessary funds, and they took up the matter with Jay Cooke, who sent his own explorers or representatives to investigate the country, and on the strength of their report he proceeded at once to make provision for the necessary issue of bonds and supply of funds to build the road.

Q. Do you remember the estimated value that Perham and his associate put upon these lands that were granted by Congress at that time?

A. I don't recall the figures just now, but they were very large.

Q. As large as ten dollars an acre?

A. Yes, ten dollars an acre, I believe.

Q. Do you remember generally what has been the average price of the lands that the Company has realized?

A. I could not give it in exact figures, but I think it would be not more than two dollars and a half an acre.

Q. Have you prepared a statement showing the cost of construction and equipment of the Northern Pacific Railway Company's lines, up to April 30, 1908?

A. I have.

Q. Will you produce it?

Witness produces statement, and same was marked for

identification Complainant's Exhibit 13—Gray.

Q. Is this statement prepared from the books of the Company in your control and under your charge?

A. Yes.

Q. Is this statement accurate, to the best of your knowledge and belief?

A. I believe that it is, and further, it is a condensation or a combination of the sworn statements made from year to year to the Interstate Commerce Commission, and also to the Railroad and Warehouse Commission of Minnesota.

Q. And received by those respective commissions?

A. Yes.

Q. And filed by them?

A. Yes.

Q. You start your first item of "Property acquired under decree of foreclosure September 29, 1875, $65,610,825.92." How many miles of road were in operation at that time?

A. 555 miles in operation.

Q. And how many under construction?

A. I don't know how many under construction, but there was a lot of work under way at the time; a great deal had been spent in surveys and reconnaissances and telegraph lines, and some boats and equipment, and so on; but there were at that time 555 miles of road at different ends of the line in operation.

Q. And this amount was the amount of the cost of the property at the time of the close of the first bankruptcy proceedings?

A. Rather it was the amount that came on the books of the reorganized Company after the foreclosure.

Q. Yes, that is what I mean.

The MASTER: As the cost to the Company?

WITNESS: As the cost of the property to the Company, yes, the cost to the Company.

Q. Have you any books or records from which you can ascertain the details of that amount?

A. I have not been able to find and diligent search has been made, books that show all the details of the construction of the line prior to the reorganization of 1875; but I have no doubt as to the correctness of those figures. Those are the figures as the books were written up after the termination of the receivership, and show the book-value of the property as of that date.

Q. Now, I understand that all subsequent items you have books to show—subsequent to September 29, 1875?

A. Yes, with the exception that some of the purchased lines, the builders of the roads did not turn over to us their detail books showing the distribution of items of construction and so on.

Q. And you have not such books in your possession, of course?

A. We have not such books, and this statement shows the cost to the Northern Pacific Railroad Company of such properties.

Q. At the time of the reorganization of 1896, after the second receivership, can you state from your books what the book-cost of construction and equipment of the railroad was at that time?

A. The book-cost to August 31, 1896, included in this Exhibit No. 13, including equipment, was $241,067,769.91.

Q. What was the amount of stock and bonds which the Northern Pacific Railroad Company had outstanding, or for which it was responsible, at the time of the receivership of 1896?

A. The total stock and bonds at that time, including a reserve of prior lien bonds of $4,617,500, was $316,000,000.

Q. Did that include all subsidiary companies for which they were responsible,—the bonds?

A. This is the amount that was created and issued to carry out the terms of the plan of reorganization by which securities were issued to the holders of the former companies, including the Northern Pacific Railroad Company itself; this is the total amount of securities issued for that purpose, carrying out the plan of reorganization.

Q. Issued in 1896?

A. Issued as of September 1, 1896.

Q. What was the amount of stocks and bonds of the Northern Pacific Railroad Company, or of subsidiary companies of the Northern Pacific Railroad Company, at least, for which it stood responsible, and which this issue of stocks and bonds replaced?

Mr. O'BRIEN: You mean before the receivership?

Mr. HOW: Yes, existing at the time of the receivership.

A. In March, 1896, when the plan of reorganization was submitted to the holders of the bonds and stocks issued or guaranteed by the Northern Pacific Railroad Company, there were fifty-four corporations which had issued $380,000,000 of bonds and stocks, all of which at that time were outstanding, and of which $275,296,044, including defaulted interest to December 31, 1896, was owned directly by the public.

Q. Can you state what the fixed charges of the Northern Pacific were in the way of interest alone, and preferred stock dividends guaranteed, if there were any such, prior to the receivership of 1896?

A. I can state what the annual interest and sinking fund charges were in order to determine what a dividend on the preferred stock would be,—which was never charged up except when it was declared. Leaving out of question the dividends on the stock, the fixed annual interest and sinking fund charges amounted, at the time of the reorganization, to $10,905,690.

Q. And what were those charges after the reorganization?

A. A few thousand over six millions.

Q. A reduction, then, of approximately—

A. Not far from five million dollars.

Mr. How: I offer this "Complainant's Exhibit 13—Gray".

Q. What is the Spokane, Portland & Seattle Railway Company?

A. The Spokane, Portland & Seattle is a road which is being built, for the most part, along the north bank of the Columbia river, in Washington, with bridges over the Columbia and Willamette rivers.

Q. Who is constructing the road?

A. It is being constructed by the Company.

Q. And who are the projectors?

A. The stock of the company is owned one-half each by the Northern Pacific and by the Great Northern Railway companies.

Q. Will you state what amount, as of date April 30, 1908, the Northern Pacific Railway Company has invested in the Spokane, Portland & Seattle Railway?

A. The cost of the Spokane, Portland & Seattle Railway, April 30, 1908, including some roads purchased, amounted to $47,827,962.37, of which the Northern Pacific Railway Company has furnished, or will furnish, one-half.

Q. Have you prepared a statement showing the present stock issue and bond issue of the Northern Pacific Railway, including bonds which it has assumed and for which it is liable?

A. I have.

Q. Will you produce that, please?

Witness produces statement marked Complainant's Exhibit 14—Gray.

Q. Is that an accurate statement?

A. It was made under my direction; I believe it to be accurate in every respect.

Q. You believe it to be in conformity with your records?

A. Yes.

Q. I see that you have certain explanatory notes attached to that statement, marked from "A" to "G" inclusive; are those notes accurate and true?

A. I have read them over and believe them to be accurate and true.

Q. How much of the common stock or of the stock of $155,000,000, and of the mortgages of $190,000,000, were issued at the time of the close of the last receivership, on September 1, 1896?

A. The entire issue of $155,000,000 of stock was issued as of that date; the new bonds issued amounted to $130,812,500, and the amount of bonds assumed amounted to $25,570,000.

Q. I notice, Mr. Gray, that you have testified that the cost of the property, as shown by the books of the corporation, up to August 31, 1896, was $241,067,769.91, whereas it appears that upon the last reorganization there were $311,382,500 of stock and bonds issued. Will you explain the difference and the cause of it?

A. The difference is the result of the carrying out of the plan of reorganization, by which a larger amount in face value of securities, bearing a low rate of interest, were issued to retire an amount of securities bearing a considerably higher rate of interest. In illustration of what I say, I will refer to some of the items in the plan of reorganization: The holders of the general first mortgage bonds, drawing six per cent interest, were offered $1,350 of new four-per-cent bonds in place of $1,000 of six per cent bonds. The holders of general second-morgtage bonds were offered 118½ per cent in prior-lien four-per-cent bonds, in addition to some cash, which was supposed to represent their interest, and a bonus in preferred stock trust certificates. The holders of the gen-

eral third-mortgage bonds were offered 118½ per cent in general mortgage three-per-cent bonds, and a bonus of stock. The holders of dividend certificates were offered 118 per cent in three-per-cent bonds, and preferred stock first trust certificates.

Q. And the result was, as you say, that the fixed charges of the Railway Company were, through this reorganization, approximately five million dollars a year less than the fixed charges of the Railroad Company whose property it took over?

A. Yes, notwithstanding that there was an increase in the face value of the securities issued.

Q. Was there not some other property besides the mere property shown in this cost of construction, including money in the bank, supplies on hand, running accounts, bill receivable, etc., that was turned over under the reorganization to the Northern Pacific Railway Company, not shown in your two hundred and forty-one millions?

A. Yes, there were several millions of treasury securities, stock, material and supplies, cash on hand, open accounts, deferred land payments, and so on, also represented by the capitalization of the new company.

Q. So that the $241,000,000 does not purport to show the cost of everything that the Northern Pacific had on hand at that time?

A. As a matter of fact, there is no relation between the two. The reorganization was carried out with reference to the retirement of the securities of the old company and the subsidiary companies and the satisfaction and doing justice by the holders of such securities in order to produce a reorganization that would be satisfactory to all and that would result in putting the property on a going basis again.

Q. In the figures of $241,000,000 as of August 31, 1896, is there included anything for the cost of the granted rights

of-way of the Northern Pacific Railroad Company?

A. That is, the right-of-way that was taken from the land-grant issued by Congress?

Q. Yes.

A. No.

The MASTER: There is no exhibit in evidence showing the figures you refer to now, $241,000,000?

Mr. HOW: I had him testify to that, but I think I will offer that.

Q. Does your answer cover the granted right-of-way as well as the odd-numbered sections?

A. My answer covers all real estate that was given to the Company for the purpose of constructing its road and carrying out the objects of its charter.

Q. Have you prepared a statement showing the cost of the construction and equipment of the Northern Pacific railroad up to August 31, 1896, as disclosed by the books of the Company, and the cost of construction and equipment made by the Northern Pacific Railway Company since that date up to April 30, 1908?

A. I have.

Q. Will you produce that?

Witness produces paper marked Complainant's Exhibit 15-Gray.

Mr. HOW: I offer Complainant's Exhibit 14.

Q. Is this statement, Complainant's Exhibit No. 15, believed by you to be accurate?

A. It is; it is the basis of statement No. 13. It shows by periods, and by the bookkeeping classification of charges, the details that make up statement No. 13.

Q. How do you determine your bookkeeping classification of charges?

A. We have followed the classification made by the Interstate Commerce Commission.

Q. This statement is headed "Cost of Construction and Equipment of Northern Pacific Railroad and Northern Pacific Railway from September 29, 1875, to April 30, 1908, as shown by reports made to the Interstate Commerce Commission to June 30, 1907, the expenditures since that date being added from the Company's books." Now, what is the fact as to whether the reports made to the Interstate Commerce Commission conformed to your own books from time to time as they were made?

A. They were made from the books.

Q. And those reports have been accepted by the Interstate Commerce Commission?

A. They have.

Q. And been filed?

A. Also by the State Railroad & Warehouse Commission of Minnesota.

Mr. How: I offer Complainant's Exhibit 15.

Q. Does this statement, Complainant's Exhibit 15, include the amount which the Northern Pacific has invested in the Spokane, Portland & Seattle Railway?

A. It does not. That is an entirely separate company, having its own books and accounts, its own organization.

Q. Complainant's Exhibit 15 shows that since the 31st of August, 1896, the Northern Pacific Railway Company has expended upon its property, for construction, equipment, improvements and betterments, $128,184,985.82. Have you prepared a statement of the sources from which the funds were obtained for that expenditure?

A. I have.

Q. Will you produce that.

Witness produces statement marked for identification Complainant's Exhibit 16—Gray.

Q. Is that an accurae statement, as disclosed by the books in your control?

A. I believe it to be so.

Mr. HOW: I offer that (Complainant's Exhibit 16—Gray.)

Q. Have you prepared a statement of the average market value of the bonds and stock of the Northern Pacific Railway Company, for a period of five years ending April 30, 1908, so far as there have been any quoted market values?

A. I have.

Q. Will you produce that?

Witness produces statement; marked Complainant's Exhibit 17—Gray.

Q. I see that you have in this statement exhibit 17 a recital of the fact that from September 1, 1901, until April, 1905, no stock was sold on the market; I understand the explanation of that to be that the stock was held under the agreement by the voting trustees that they were not to be sold?

A. That is not the explanation.

Q. What is the explanation?

A. The explanation is that the stock was held by the Northern Securities Company.

Q. Oh, that is true, held by the Northern Securities Company. From April, 1905, to April 30, 1908, the average market price per share was $170.887; is that an accurate statement?

A. I believe it to be so. It was compiled carefully from the files of the Commercial & Financial Chronicle, of New York.

Q. Containing market quotations daily?

A. Yes, sir.

Q. And were all these quotations compiled in the same way?

A. They were.

Mr. HOW: I offer that, Complainant's Exhibit 17.

Q. My question was whether all the quotations contained

in that statement were compiled in the same way.

A. The same answer in regard to all.

Q. Have you prepared a statement showing the stock of the Northern Pacific Railroad Company and its successor the Northern Pacific Railway Company, outstanding from time to time from the year 1880 to April 30, 1908, with the dividends paid upon that stock and the year of the payment of such dividends and the amount?

A. I have.

Q. Will you produce that.

Witness produces statement; marked Complainant's Exhibit 18—Gray.

Q. Is that an accurate statement?

A. I believe it to be so.

Q. I observe that in the year 1882 there were $4,640,821.20 dividends, being 5.11 per cent of the stock then outstanding paid in dividend certificates. Do you know what became of those dividend certificates?

A. They were provided for in the re-organization of 1896.

Q. They were never paid in cash, then, by the Railroad Company?

A. No.

The MASTER: Company's notes, I suppose?

Mr. HOW: They were dividend certificates, and were provided for in the re-organization; they were never paid, although they were issued in 1882, and the re-organization took place in 1896, fourteen years later.

The MASTER: They were certificates that called for money?

Mr. HOW: Yes.

The MASTER: Not for stock?

Mr. HOW: That is right; dividend certificates.

Mr. HOW: I offer Complainant's Exhibit 18.

Q. Have you prepared a statement of the average of bonds

outstanding for the fiscal years 1880 to 1896, inclusive, with the interest on the same?

Q. Will you produce that?

Witness produces "Complainant's Exhibit 19—Gray."

Q. This statement shows that the aggregate amount of interest chargeable against this bonded indebtedness, during the seventeen years covered, is $77,868,702.34, and that there was actually paid during that time $65,061,646.51, and that there was defaulted $12,807,055.83. When did that default in interest occur?

A. In 1893 and subsequent years.

Q. Just prior to the receivership, which was wound up on September 1, 1896?

A. Yes.

Q. The statement shows that the average accrued interest on bonds and dividends on stock of the Company during that period is 3.06 per cent; what do you mean by accrued dividends on stock, if "accrued" applies to dividends as well as to interest?

A. It does not; "accrued" applies to interest. The average dividends on stock for the seventeen years shown on this statement was only .56 of one per cent. The amount of dividends—the average dividends per annum—was only $489,651.30, which when added to the average accrued interest on the bonds made up this 3.06 per cent, but applying the percentage to the actual average interest paid and the dividends on the stock, the percentage was only 2.60 per cent.

Mr. HOW: I offer Complainant's Exhibit 19.

Mr. O'BRIEN: Exhibit 19 does not show the dividends; that is shown on Exhibit 18, is it not?

Mr. HOW: That is right.

WITNESS: That is, Exhibit 19 shows the average amount of stock and the average dividend on the same, but it is made up from figures included in Exhibit 18. The details from

which that is made up are shown in Exhibit 18. If I were making it over again, perhaps I would draw a dividing line.

Q. There is merely a summary of 18 in 19 for the purpose of combining—

A. Of combining the dividends with the interest.

Mr. O'BRIEN: And 3.06 is the average accrued interest and dividends paid?

WITNESS: Yes, and the average dividends paid—plus the average dividends paid.

O'BRIEN: And the 2.60 is the average interest actually paid and the dividends?

WITNESS: Yes, sir.

Mr. HOW: Leaving out the defaulted interest.

Mr. O'BRIEN: Yes, I understand.

Q. Have you prepared a statement showing the interest on the mortgage debt and dividends on stock from the date of the taking over of the property by the Northern Pacific Railway Company to April 30, 1908?

A. I have.

Q Will you produce that?

Witness produces statement marked "Complainant's Exhibit 20—Gray."

Q. This statement shows that in 1897, no dividend was paid; that in 1898, 1.94 per cent dividend was paid; in 1899, 2.97 per cent dividend was paid, and so on, increasing gradually until 1904, in which year 7 per cent dividend was paid, and that rate has been maintained since; that is the fact, is it?

A. Yes.

Q. The last item in the schedule is 1908 to April 30, the rate of interest being 5.25. Will you explain that?

A. The dividends are payable in February, May, August and November. The February dividend has been paid, and this is here the dividend for three-quarters, 5.25; which is

three-quarters of seven per cent.

Q. Accounted for by the fact that these years are your own fiscal years ending June 30, and three-quarters have been paid?

A. Yes.

Mr. How: I offer Exhibit 20. I offer all of the exhibits I have had marked, if I have overlooked any.

CROSS-EXAMINATION.

By Mr. O'BRIEN:

Q. The Northern Pacific Railroad Company, Mr. Gray, was chartered by an act of Congress passed in 1864?

A. Yes, sir.

Q. Have you a copy of the charter granted to the Company?

A. I have not a copy in my files, but I have no doubt that the assistant secretary probably has in his office.

Q. What was the original capital stock of the Company under that charter?

A. 100 millions.

Q. 100 million dollars?

A. Yes.

Q. Was it subscribed for?

A. There was a sort of subscription, I think it was divided into twelve parts, something of that kind; I am not quite familiar with that.

Q. Do the records of the Company show what, if anything, was paid for that stock?

A. I do not believe there are any records now that show, except in the case of an original subscription which was made in order to create a board of directors, I believe in the fall or winter of 1864. The charter by Congress provided for a board of commissioners. These commissioners met, I think it was in September, 1864, and arranged for a subscription, (I be-

lieve it was a ten per cent subscription) in accordance with the terms of the charter, and there was a little more than enough subscribed to organize the Company, form a board of directors, and then the commissioners ceased to exist as such.

Q. How much was paid in upon that subscription?

A. It was something over $200,000.

Q. So that there was realized, from the sale of the original stock, in the neighborhood of $200,000?

A. That is all that I have been able to find any record of.

Mr. HOW: He does not mean that the whole 100 millions was—I think the question was misleading.

The MASTER: That is for the purpose of organization, as I understand?

WITNESS: Yes, sir.

Mr. HOW: But the question implies that the whole 100 millions was issued.

The MASTER: He has not stated how much of the stock was in fact issued at that time.

Mr. HOW: No.

Q. When you say in the neighborhood of $200,000 was subscribed, do you mean that more or less than that amount was subscribed?

A. It was more than that. I believe the number of shares subscribed was 20,070. I could perhaps find a memorandum among my papers. (Examining memoranda.) The number of shares subscribed were 20,075; on a basis of $100 to the share that would be $2,007,500; of which ten per cent was paid in, or $200,750.

Q. Was the balance of the stock ever subscribed for?

A. Not in the ordinary sense of the word, in so far as I know.

Q. Was the 100 millions of stock originally authorized ever issued?

A. There were certain interests that came in at a subse-

quent date and the stock, I think, was divided among them, but I think I had better say I don't know; I can get more definite information as to that later.

Q. Will you be a good enough to do that?

A. I will, sir.

Q. I understood you to say that no actual construction was commenced upon the system until the enterprise was financed by Jay Cooke?

A. By construction I mean the building of a railroad line.

Q. Yes. That was in 1870?

A. Yes.

Q. Prior to that time had Congress, by joint resolution, authorized the issuance of bonds?

A. I believe that that was necessary or the bonds could never have been issued.

Q. Well, had that been done?

A. That I am not sure of.

Q. Have you the history of the various stock and bonds issues of the Northern Pacific with you at this time?

A. I have a memorandum of the bond issues since the reorganization of 1875. I have not got any detail stock issues.

Q. Will you turn to your memorandum. Now, when was the first bond issue in the history of this railway?

A. You mean the reorganization?

Q. No, I don't; I mean the first bond issue following the granting of the charter by Congress in 1864.

A. In 1869 or 1870.

Q. What was that issue? Describe it.

A. It was an issue of bonds bearing interest at the rate of 7.3 per cent per annum.

Q. Were those bonds issued pursuant to a joint resolution adopted by Congress? A. I think so, but I am not able to answer positively.

Q. What was the amount of that issue?

A. I could not give you the exact figures. It was upwards of 30 millions, possibly 34 millions.

Q. Were those bonds sold?

A. They were.

Q. To whom?

A. To anyone that would buy them.

Q. Do you know to whom they were sold?

A. No, I don't think anybody knows. They were sold at one time very freely by Jay Cooke & Company.

Q. Were they all taken by Jay Cooke & Company, originally.

A. Jay Cooke & Company were appointed the financial agents of the Company to raise the moneys to carry on the construction of the road.

Q. Did they underwrite this first issue of bonds—Jay Cooke & Company?

A. Yes.

Q. And accounted to the Northern Pacific Railroad Company for the proceeds of those bonds?

A. Yes.

Q. How much did the Northern Pacific Company realize from the sale of those bonds of the first issue?

A. I believe it was upwards of 28 millions of dollars; between 28 and 29.

Q. When was that amount received by the company?

A. From time to time as fast as the bonds were sold.

Q. Between what periods?

A. In 1870, 1871 and 1872, I think.

Q. When was the next issue of bonds?

A. Under the reorganization?

Q. No, before the reorganization. Was there any issue of bonds?

A. No.

Q. No other issue of bonds before the reorganization?

Mr. HOW: Don't get mixed up,—there were two reorganizations.

MR. O'BRIEN: I know.

Q. Before the reorganization of 1875.

A. I never heard of but one issue.

Q. But one issue of bonds. What was the exact date of that reorganization?

A. September 29, 1875.

Q. You are reading from a pamphlet?

A. Yes.

Q. What pamphlet is that?

A. It is a report of the president and directors of the Northern Pacific Railroad Company to the stockholders at the annual meeting September 27, 1876.

Q. Can you furnish us with a copy of that?

A. I shall try to do so, although my own copy is in rather a delapidated condition.

The MASTER: That was the first year after the reorganization?

WITNESS: Yes, sir.

Q. The reorganization of 1875 followed receivership proceedings, which of course had been instituted—

A. In the preceding March.

Q. —in the preceding March. At that time the Company was in the hands of a receiver for how many months?

A. Six months.

Q. Who was the receiver?

A. Gen. Cass.

Q. Have you a copy of his report as to his receivership—his final report?

A. I have not.

Q. Do you know whether there is a printed copy of his report extant?

A. I do not. I never saw it.

Q. You never saw any report of his?

A. No.

Q. At the time Mr. Cass became receiver of the Northern Pacific Railroad Company, how many miles of road had actually been constructed and were in operation.

A. 555 miles.

Q. That number of miles of road had been constructed and equipped from the proceeds of the sale of the bonds which you have already described?

A. Yes.

Q. At the time of the appointment of Mr. Cass as receiver, had any other sum been paid, for or on account of the stock of the Northern Pacific Railroad Company, except the amount of $207,000 to which you have already referred?

A. I don't know.

Q. Do the books or records of the Company show the payment of any other or further sum?

A. I think not.

Q. Then, so far as you are able to determine from the books and records of the Company, no other or greater sum had been paid at the time of the appointment of Mr. Cass as receiver on account of the stock of the Company?

A. We have not got complete records of cash receipts and disbursements. There were, prior to that time, considerable sums of money spent in surveys and reconnaissances and explorations, how much I am not able to say, I have not been able to find records which would show, or how much cash was put in or how it was disbursed. At that time, and in fact until 1881, I think it was, there were accounting offices in New York, in Brainerd, and somewhere on the coast, either Portland or Tacoma, I am not sure which just now.

MR. HOW: Tacoma, I think.

WITNESS: I am not able to find a set of unified records, if I might use the expression, of receipts and disbursements.

Q. From the books and records of the Company in your possession, or to which you have access, are you able to say that any other or greater amount was paid on account of the original stock of that Company than the sum of $207,000 to which you have already testified?

A. I am not able to say.

Q. And so far as the books and records of the Company show, to which you have access, no other or greater amount than that has been paid on account of the stock—that is, was paid on account of the stock—up to the time Mr. Cass was appointed receiver in 1875?

A. I do not believe that we have any records that show that any payment was made such as you have described.

Q. So far as the books and records of the Company show, no other or further sum than that amount was paid, up to the time Mr. Cass was appointed receiver in 1875?

A. Except as money must have been paid for these expensive explorations and surveys.

Q. So far as the records and books of the Company in your possession, or to which you have access show, no other or further sum was paid up to the time Mr. Cass was appointed, in 1875?

A. I am not able to answer that absolutely.

Q. Are you able to answer whether or not any such item appears upon the books?

A. I don't think so.

Q. Then are you not able to say that, so far as the books show, no other or further sum than the amount I have mentioned was paid on account of the stock up to the time Mr. Cass was appointed receiver in 1875?

A. Well, I have already answered that; that so far as I know—

Q. I am not asking for your personal knowledge, I am asking for your statement as to whether or not it is a fact that so far as the books and records of the Company show—

A. I am not playing on words, Mr. O'Brien.

MR. HOW: I think he has answered that question three times.

Q. I am asking you whether or not, so far as the books and records of the Company show, any other or further sum was paid on account of the stock than the sum of $207,000 which you have mentioned up to the time Mr. Cass was appointed in 1875.

A. I should have to look at the books again, to see whether there were any small amounts paid, but I don't think there were any considerable amounts.

Q. Will you do so, and if you find that the books do show the payment of any other or further sum, let us have that informaton?

A. Yes.

MR. HOW: Let me ask one question. Do you know whether or not your books—any books in your custody—show the payment of the $207,000 that you have testified to, or is that a matter of your information outside of your books?

WITNESS: That is a matter of information outside of the books, yes.

MR. HOW: So that you never have found any books showing any payments by anybody on account of stock?

WITNESS: No.

Q. Then the truth is that you have no information, from the books or the records of the Company, in regard to the payment of this sum of $200,750?

A. I have not.

Q. Where did you get that information?

A. I got it from Smalley's History of the Northern Pacific.

Q. Do you know whether or not that is authentic?

A. I believe his account of that transaction to be in accordance with the records as kept at that time.

Q. Then I understand, Mr. Gray, that so far as the books and records of the Company are concerned, they don't show the payment of anything on account of the capital stock originally authorized?

A. I should wish the privilege of answering that later.

Q. Very well. At the time Mr. Cass was appointed receiver, had the authorized capital stock of the Company been issued?

MR. HOW: You mean the full authorized 100 millions?

MR. O'BRIEN: I said the authorized capital stock. Yes, I intended that to be the full authorized stock.

A. Stock had been issued; but whether the full amount of one hundred millions had been or not, I am unable to say.

Q. Can you ascertain that fact and let us know?

A. I shall try to do so.

Q. You are not able to say now what amount had been issued?

A. No.

Q. Are you able to give an approximate statement of the amount?

A. I am not.

Q. Will the books of the Company show the amount?

A. I am not sure of that.

Q. Have you the plan of reorganization followed in the reorganization of 1875?

A. There is a copy of it. (Referring to a paper marked for identification, "Defendant's Exhibit K—Gray.")

MR. O'BRIEN: May we have that?

MR. HOW: It is the only copy we have.

WITNESS: I may be able to find another copy of it; if I can, I would be glad to furnish it.

Q. Mr. Gray, were there not two joint resolutions of

Congress, authorizing separate bond issues prior to the reorganization of 1875?

A. I am not able to say, Mr. O'Brien.

Q. Have you a description of the railroad actually constructed at the time of the appointment of Mr. Cass in 1875?

A. Not with me.

Q. Are you able to describe it from memory?

A. The road was built from Thomson Junction, Minnesota, across Minnesota, I believe, to the east bank of the Missouri river, and there was some line then built on the coast.

Q. There were at that time no branch lines?

A. From the report to the stockholders, (the first report after the reorganization) the property is stated as being 230 miles in Minnesota, from Fargo to Thomson Junction, one-half interest in the track of the Lake Superior & Mississippi Railroad from Thomson Junction to Duluth; 195 miles in Dakota from Fargo to Bismarck (that is the line that I stated from my own memory), and 105 miles in Washington territory, from Kalama, on the Columbia river, 40 miles below Portland, to Tacoma, on Puget Sound; in all 555 miles of railroad in operation.

Q. May I look at that report that you are reading from?

A. Yes, sir.

Q. May I have this until 2 o'clock?

A. Yes, sir.

Recess until 2 o'clock P. M.

AFTERNOON SESSION.

Q. Mr. Gray, have you found a copy of the original charter?

A. Yes, sir (producing pamphlet). There are other matters in that same pamphlet.

MR. O'BRIEN: I will state to the Master that it has been agreed that the plan for the reorganization of 1875, the report of the president and directors to the stockholders of Septem-

ber 27, 1876, the plan of reorganization dated March 16, 1896, and the original charter of the Northern Pacific Railroad Company, together with certain other laws and matters—

MR. HOW: The mortgage securing the 7.3 bonds is there.

MR. O'BRIEN: Yes;—will be taken by Mr. Staples and printed and may be offered in the record afterwards, but we don't offer them now; we are going to have them printed so that there will be a sufficient number of copies for all parties. We will return the original to Mr. Gray as soon as the printing is done.

THE MASTER: They are not a part of the record at present?

MR. O'BRIEN: They are not a part of the record at present.

THE MASTER: You expect to have them printed, and if you desire you will offer them latter on?

MR. O'BRIEN: Yes, sir.

Q. Mr. Gray, was there any additional land-grant made to the Northern Pacific Railroad Company after the grant contained in the act of Congress of 1864 authorizing the road?

A. I do not know. I do not think so. The plan of reorganization of 1896, to which you have just referred, shows the conditions of the land-grant, the number of acres or sections per mile of road in the different states.

Q. I don't know of any additional land-grant; I just wanted to ascertain if there was any.

A. Perhaps, in order to save any misunderstanding, it may be said that one of the branch lines, (the Little Falls & Dakota) had a land-grant of its own.

THE MASTER: Was this land-grant created by the same act that created the incorporation?

MR. O'BRIEN: Yes, sir.

WITNESS: Yes, sir.

THE MASTER: So that there was one congressional act that covered the whole thing, the land-grant and the right-of-way and the creation of the corporation?

MR. O'BRIEN: That was the act of Congress approved July 2, 1864.

Q. Have you, since the adjournment, been able to ascertain anything with reference to the payments made on account of the original capital stock? A. I have not. I saw Mr. Johnson, my assistant, who made a thorough search for the records, some time ago, in connection with the Spokane rate case, and he tells me that he has not been able to find any records showing subscriptions to the capital stock of the original company.

Q. So that there is no addition to be made to your testimony in that respect as given this morning?

A. I am not able to make any.

Q. Had the authorized capital stock of one hundred millions been issued prior to March 1875?

A. All of it?

Q. Yes.

A. I don't know.

Q. Do you know whether any large amount of it had actually been issued?

A I do not know from the knowledge that I ought to have from the books of account of the company.

Q. Immediately following the reorganization of 1875, there was issued one hundred millions of capital stock?

A. Not all at once, I think. In the reorganization provision was made for a majority of the stock in preferred stock, which was used to retire the 7.3 per cent mortgage bonds issued through Jay Cooke & Co., and for the payment of floating debt and matters of that kind.

Q. As a part of the plan of reorganization, fifty-one per cent, or fifty-one millions of preferred stock, was authorized?

A. Yes; that is shown plainly in the plan.

Q. And that stock was issued in exchange for the existing indebtedness of the Company?

A. Yes.

Q. That indebtedness at that time was between twenty-eight and twenty-nine million dollars?

A. The obligation of the Company was more than that. There were bonds and notes outstanding in excess of thirty-one millions.

Q. Between thirty-one and thirty-two millions?

A. That is my recollection.

Q. And that was canceled for the fifty-one millions of preferred stock?

A. I don't think it was one transaction.

Q. No.

A. The plan of reorganization shows the terms on which the exchange was made, and the stock wasn't all issued at once, as is shown by the reports.

Q. No, I don't understand that it was, Mr. Gray, but I am asking for the final results.

A. That was the object for making the stock preferred.

Q. Well, was not that object carried out?

A. Yes.

Q. So that the result was that the fifty-one million dollars preferred stock was exchanged for the indebtedness of the Company which existed in March, 1875?

A. Not all of it.

Q. Well, how much of it then?

A. This first report, which it is proposed to have printed, shows, in the balance-sheet made as of September 20, 1876, and signed by George E. Beebe, treasurer, $34,107,429.58 of preferred stock had been issued in exchange for first mortgage bonds and interest on same.

Q. Of what value?

A. That is par value. The same balance sheet shows as an asset first mortgage bonds with interest, surrendered for preferred stock, $34,566,351.58, being about four hundred and

fifty-nine thousand dollars in excess of the first amount stated; which would indicate to me as an accountant (I am not speaking now as a matter of fact, but it would indicate to me as an accountant) that they had been able to retire some of these bonds for less than the interest accrued as of the date when they took the account of the books. It is a small matter in the way of a percentage on the total issue.

MR. HOW: You mean less than the principal and interest accrued?

WITNESS: The principal and interest.

Q. State whether or not the entire fifty-one millions of preferred stock provided for by the reorganization of 1875 was issued at any time prior to the receivership proceedings later.

The MASTER: In 1893?

MR. O'BRIEN: In 1893.

A. I have in my hand the report of the Company to the Interstate Commerce Commission as of June 30, 1896. If Mr. Staples has the report for three years earlier, perhaps it would be more to the point, although I don't believe there was any change in those three years, but if you wish I will state what this report shows.

Q. Yes.

A. It shows that at that time the total amount of preferred stock outstanding was $35,238,346.86. That would not show that only a matter of a million more stock had been issued from the date I read in September, 1876. What it does show is this: That of the total amount of stock issued a very large amount of it had been retired through the sales of lands. Some of it had been received in payment for lands under the terms of the plan.

Q. Well, can you not—

A. I can make a statement from year to year of the issues

of preferred stock I could make it from the reports, also. I haven't them at hand, but I can make it in my office.

Q. Will you furnish us with a statement of the issues of preferred stock following the reorganization of 1875, up to the time of the appointment of receivers in 1893, together with a statement of the amount of such stock that was retired?

A. I will do so.

Q. The plan of reorganization of 1873 provided for the retirement of preferred stock at the option of the holder by his accepting lands in lieu of such stock, did it not?

A. Yes. I think I have with me a memorandum from which I can state the total amount of land. Out of the net cash receipts of the land-grant, $15,755,703.26 of preferred stock was canceled.

Q. Prior to 1896?

A. There was a small amount of it after August 31, 1896, a matter of $9,800. That amount with the other amount that I gave you from the report would make about the fifty-one million dollars.

Q. That accounts for the entire fifty-one millions of preferred stock, does it not?

A. About that; it may not to a cent; about that.

Q. Was anything paid to the Company for that preferred stock except the indebtedness existing in March, 1875?

A. I think there was an amount of the stock that was held in the treasury and sold subsequently.

Q. Can you give us that amount?

A. Not now. I can give it to you later.

Q The reorganization of 1875 provided for forty-nine millions of common stock?

A Yes.

Q. Was that stock issued?

A. It was.

Q. Who received it?

A I am able only to say now that it was issued in accordance with the plan which states how it should be issued. It says, "Certificates of this stock shall be issued to holders of, or to those now entitled to, certificates, share for share, and the residue rateably to those originally entitled thereto or their assigns."

Q. What, if anything, was received by the Northern Pacific Railroad Company for the forty-nine millions of common stock issued pursuant to the reorganization plan of 1875?

A. The stock held by the former holders and the rights of such stockholders.

Q. But you are unable, from the records of the Company, to show who those stockholders were, or what consideration they paid for their stock?

The MASTER: That is, paid the Company?

MR. O'BRIEN: Paid the Company.

A. That question is in two parts. For instance, the accounting departments of corporations have no record of stockholders. That is usually kept in the office of the secretary. But as to the matter of the consideration, I am not able to say, at this time, that there was any money consideration received when that stock was issued; but in preparing the statement of preferred stock that you asked me for some time ago, I will try and make it cover the entire stock issue of 100 millions.

Q. Is it necessary that we should ask this information from the secretary, Mr. Gray, or will you furnish the information on that subject which is in possession of the Company?

A. I suppose there is a list of several hundreds or thousands of those stockholders.

Q. I don't want that.

A. I will see what can be had in the matter. Do you want the names of the stockholders?

Q. Oh, no, I don't.

MR. HOW: That is all the information he says the secretary has, is the names of the stockholders.

MR. O'BRIEN: We don't care about that.

The MASTER: What you want to find out is what they got for this stock?

MR. O'BRIEN: Yes.

Q. What I desire to ascertain, Mr. Gray, is whether or not any consideration was paid the Company for this stock, or whether it was what might be termed promoters' stock.

Mr. HOW: Well, hasn't he testified that the books do not disclose, one way or the other, with regard to that?

Mr. O'BRIEN: Well, I thought so, but Mr. Gray now refers to the records of the secretary.

WITNESS: I thought you wanted a list of the stockholders.

MR. O'BRIEN: Oh, no, I don't care about a list of the stockholders.

Q. The forty-nine millions of common stock provided for by the reorganization plan of 1875 was exchanged for capital stock of the Company which had been issued prior to that time?

A. Yes.

Q. So the surrender of the old stock was the consideration that was given for the new common stock which was issued?

A That is my present belief.

Q. Now, if your records show any consideration that was given for the original stock that was issued, please produce it; that is all we care to know.

Mr. HOW: Now, am I right in understanding that you have testified that your records do not disclose anything about it, one way or the other?

WITNESS: Yes sir, we have no book records that show what was received from the holders of the original capital

stock in the way of money.

The MASTER: Except as to the two millions, I believe, or such a matter?

WITNESS: Well, as to that I had to admit that my knowledge of that came through a record outside of our own books.

The MASTER: As I understand, there is a record of that transaction?

MR. HOW: No.

MR. O'BRIEN: No, he testified to that.

WITNESS: I think you will find the record of that transaction in that paper under your hand.

Q. Did you not speak this morning of the original stock being divided between four interests?

A. I think I said twelve interests.

Q. What were those interests?

A. There, again, I was testifying from Smalley's History, and I suppose that is not allowable. Mr. How objected to my testifying to what our own books do not show.

Q. Does the knowledge that you have acquired of the early transactions of the Northern Pacific Railroad Company confirm this statement of Smalley's History?

A. I believe Smalley's History, in those particulars, to be substantially accurate, but I am not able, from any book records in my possession, to substantiate it.

Q. Well, we have no objection to your stating that; we are trying to get a logical history of this matter, Mr. Gray.

MR. HOW: I advise the witness not to state those things merely from somebody else's statements as matters of his own knowledge. We will give you anything that we know anything about.

Q. Will you please state your best knowledge and belief with regard to the divisions of the original stock of which we have been speaking?

MR. HOW: Now, may I ask a question? Have you any

knowledge with regard to that original issue of stock?

WITNESS: Only such as I have read in Smalley's History.

MR. HOW: I object, then.

WITNESS: And even as to that, my memory is not very clear.

MR. HOW: I object upon the ground it is incompetent, irrelevant and immaterial.

Q. You know the stock was issued?

A. I know it must have been.

Q. You know it was exchanged for this forty-nine millions of common stock?

A. Some, if not all of it.

Q. You know that the books of the Company show in fact no cash received for it?

A. That is, of the reorganized Company?

Q. The books of any of the companies.

A. Well, as to that I expect to submit a statement.

Q. You know there was never a mile of road built until after the bonds had been issued under the congressional authority?

A. Well, it was provided that five million dollars should be furnished right away; whether there were actually any bonds sold, I don't know.

Q. I say you know there was not a mile of road built until bonds were provided for?

A. Until the bonds were provided for.

Q. Nearly six years after the organization?

Mr. How: What do you understand by "road built"? Do you mean there wasn't any reconnaissance, or engineering or surveys, or anything until the bonds were sold? What do you mean by building the road?

Mr. O'BRIEN: Well, Mr. How, you can re-examine.

Mr. HOW: I would like to understand it, myself.

Mr. O'BRIEN: I suppose the building of a road is the build-

ing of a railroad; the building of a mile of road is the construction of a mile of road.

A. Of course, before you build a railroad, you have got to make careful surveys and lay out the ground, but the actual turning of the dirt, the actual grading of the road, was not begun until 1870.

Q. Until when?

A. 1870.

Q. That was after a portion of the bonds had been sold?

A. That was the year in which the bonds began to be sold. Now, as to whether a portion had been sold or not, I am not able to say.

Q. In 1875 there were 520 miles of road built?

A. 555 miles of completed road.

Q. 555 miles of completed road, and an indebtedness against the Company of between thirty-one and thirty-two million dollars?

A. Yes.

Q. Which, roughly estimated, was between sixty and seventy thousand dollars per mile?

A. Yes.

Q. And no record of the receipt by the Company of any cash except from the bonds?

A. It is hardly fair to divide the completed mileage into any figures of that kind and say that that was so much per mile, for the reason that work had been begun on what was to be eventually the Northern Pacific system, and there would be uncompleted road and various assets in addition to the actual completed mileage.

Q. And there is not of record, so far as you know, in the world, a statement of the receipt by the Company of any cash except from those bonds and floating indebtedness, up to that time?

A. There was over a million dollars from the sale of lands.

Q. A part of the land-grant?

A. A part of the land-grant.

Q. But except from the proceeds of the bonds and except from the land-grant, there is no record of the receipt of any other money?

A. Not that I know of.

Q. Have you an understanding as to the interests which controlled the stock of the Company at that time, in 1875, when a receiver was appointed?

A. Not from anything in my own knowledge or from any record of the Company in my possession.

Q. Have you ever heard a statement of what interests held the stock at that time?

A. I don't think I ever heard anyone talk about the particular interests; of course, I know who the directors of the Company were at that time, and they were largely interested in the property.

Q. Did you, from reading or from conversation, ever obtain any informaton as to the interests holding the stock at the time the receiver was appointed in 1875?

A. The principal interests, I believe, were represented on the board. I havn't a good memory for names—I might forget your name if I met you on the street tomorrow—and there are certain of those names that I recall from the records that I have read.

Mr. How: He has not asked you to state the names, Mr. Gray; when he does, if you know nothing about it excepting what you have read somewhere or other, I desire an opportunity to object.

The MASTER: Read, or heard from others.

WITNESS: I don't know who the interests were at the time of the receivership.

Q. Well, from all of your researches into the history of the Northern Pacific Railway Company, your knowledge of its records, from what you have read and heard upon the subject, are you not able to state that the original capital stock of that company was issued for a cash consideration of less than one million dollars?

Mr. How: Just answer the question yes or no, whether you are able to state in fact.

A. I am not able to state in fact.

Q. In your testimony this morning, Mr. Gray, you gave a history of the Northern Pacific Railroad, more or less complete, did you not?

A. It was very meager, I think.

Q. Well, you did give—

A. I gave two or three of the salient facts in connection with it.

Q. In so testifying, you referred to a large number of matters which were not within your own knowledge?

A. For instance?

Q. Did you not? A. Yes.

Q. In perfect good faith this morning you stated, for the information of the Master, matters which came to your knowledge from Smalley's History of the Northern Pacific?

A. Yes.

Q. And felt justified in giving any information of that sort which you believed to be reliable?

A. Yes.

Q. Now, why is it that you won't follow that same course with me and answer my questions in the same way?

A. Well, because of the objection of Mr. How.

Mr. How: Well, now, let me explain my objection: I cautioned the witness not to testify to anything as of his own knowledge that was not within his own knowledge. My recollection is that he explained this morning that he was testifying

from Smalley's History, and they are matters of general knowledge that we all knew before he offered the testimony. Now, they get down to details, and he doesn't know. Whatever he has read, he doesn't remember distinctly. I think my objection is in good faith and ought to be so considered.

The MASTER: There was no objection to the testimony that was received this morning.

Mr. HOW: None whatever; and he explained fully just what he was doing. He has been guilty of no bad faith.

Mr. O'BRIEN: Oh, not the slightest. I tried to embody that in my question. There is no question about that, because Mr. Gray is still perfectly willing to proceed in the same manner.

Q. Well, Mr. Gray, we are very anxious to ascertain whether or not any valuable consideration of any kind was paid to the Northern Pacific Railroad Company for the capital stock of that Company issued prior to the appointment of Mr. Cass as receiver in 1875; and if you have, from any of the sources upon which you have relied in testifying in this case, obtained any information with reference to that, I wish you would give us the information, together with the source of your information.

A. You mean a money consideration?

Q. Any consideration.

Mr. HOW: Money or services.

A. I have a general knowledge of the fact that these people that promoted the Company, gave their services and gave their thought, and that there must have been, as I stated this morning, as a matter of necessity, considerable amounts of money spent in explorations and reconaissances and surveys, and matters of that kind, but I have no book records from which I can testify as to the receipt of moneys or the disbursement of moneys in connection therewith.

Q. Well, your understanding is that the promoters of the

enterprise gave, as you say, their time, services and thought to the organization of this Company; that, in addition to that there were certain necessary expenses from the making of surveys down to postage—

A. Yes.

Q. —and that in consideration of those services and expenditures, the original one hundred millions of capital stock was issued to them in the proportions in which they claimed to be entitled to them?

A. That is a general conclusion that anyone may draw from what is a matter of common knowledge in connection with it.

Mr. How: The whole original one hundred millions, you say, was issued for that?

WITNESS: I don't know.

Mr. How: Well, I do.

Mr. DURMENT: Well, he has testified to two hundred thousand.

Mr. O'BRIEN: You ought to be the witness.

Mr. How: Well, I am willing to go on. I know better than that.

Mr. O'BRIEN: You were not born then, were you?

Mr. How: The plan of reorganization says that forty-nine millions of the stock shall be issued, share per share, to those entitled to certificates of stock in the old organization, and the balance shall be given to them in some other manner. Now, it cannot be, if there were one hundred millions outstanding, that forty-nine millions takes care of "share for share" and leaves a balance.

Q. This last question of mine, Mr. Gray, applies to whatever proportion of the original stock was issued, does it not?

A. Yes.

Q. And your answer applies in the same way. You are not able to say at this time whether the entire authorized

amount was issued, or not?

A. Unfortunately, prior to the reorganization, there was no such report as this, and no books from which I am able to obtain a balance-sheet that would show the condition of affairs.

Q. You don't assume to give any information as to whether one hundred millions of capital stock had been issued, or forty-nine millions?

A. I do not.

Q. But whatever was issued was issued, as you understand it, under the circumstances which you have described?

A. I have no definite knowledge on the subject.

Q. No, I know that; but that is your understanding of it?

A. It would be only a matter of supposition.

Q. That is your understanding of it, is it not?

A. It is as I say, it would be a matter of supposition with me.

Q. Is that your understanding of it?

A. Why do you prefer the word "understanding" to "supposition?"

Q. Well, because I am asking the question. Of course, I must use my preference in asking the question. Is that your understanding?

A. I beg your pardon; I have no definite understanding in regard to the matter.

Q. Is it your understanding, definite or indefinite, is it your best understanding of it?

A. I don't think you ought to press upon me using a word that may have one meaning to me and another to you.

Q. Is it your best judgment?

A. It is my judgment, apart from such things as have been indicated, that there was no considerable amount of money subscribed by the stockholders to the Company.

Q. Was any amendment made to the charter of the Northern Pacific Railroad Company between the reorganization of 1875 and the appointment of the receivers in 1893, which permitted the issuance of additional capital stock?

A. I don't know. I think that pamphlet would show whether it was so or not.

Q. Which pamphlet do you refer to?

A. That pamphlet in which the charter is given. There were several acts of Congress there.

Q. What was the authorized capital stock of the Northern Pacific Railroad Company at the time of the appointment of the receivers in 1893?

A. One hundred millions.

Q. Was that stock fully issued?

A. I don't know.

Q. There was no stock issued between the appointment of the receiver in 1893 and the report to the Interstate Commerce Commission in 1896, was there?

A. No.

Q. Well, now, according to that report, how much of the authorized capital stock was actually outstanding in 1896?

A. The total amount in 1896 of the capital stock was $84,238,346.86. I see that during the year there had been a decrease of $11,800 which was the retirement of preferred stock by the sale of land.

Q. And that capital stock was divided how?

A. $49,000,000 of common and $35,238,346.86 of preferred.

Q. So that the forty-nine millions of common stock authorized by the reorganisation plan of 1875 was still outstanding?

A. Yes.

Q. And the fifty-one millions of preferred stock provided for by that plan had been issued, and about fifteen millions of it retired from the proceeds of the sale of lands?

A. Yes sir.

Q. And the capital stock outstanding was, as you have given it, eight-four millions?

A. Yes.

Q. Between the reorganizaton in 1875 and the appointment of receivers in 1893, the main line had been completed?

A. Yes.

Q. The plan of reorganization of 1875 contemplated the placing of a general lien mortgage upon the properties of the company at the rate of $25,000 per mile?

A. Yes; I believe $25,000 was the rate.

Q. And, from time to time, as the road was constructed, bonds to that amount were issued and sold by the Company?

A. Yes.

Q. And at the time of the receivership, bonds had been issued and sold, secured by that mortgage to what amount?

A. By the first mortgage?

Q. The general lien mortgage.

A. It is called the "general first mortgage"; the word "lien" does not appear in the name of that mortgage.

Q. Yes, first mortgage bonds.

A. The general first mortgage bonds outstanding June 30, 1896, were $41,541,000.

Q. Does that amount comprise the entire issue of bonds under the first mortgage?

A. No, the amount issued of the general first mortgage was $46,943,000.

Q. Had they been retired?

A. The other bonds had been retired through the operation of the sinking fund.

Q. This series of bonds of which we are now speaking were all issued under the first mortgage referred to in the reorganization plan of 1875?

A. Yes.

Q. Was there at that time any other mortgage which was a general lien upon the properties of the Company, that is, in 1875?

A. No, nor until 1881. While it was contemplated in the reorganization, the bonds themselves were not issued until 1881.

Q. What bonds do you refer to as having been issued in 1881?

A. The general first mortgage, at the rate of $25,000 a mile.

Q. Up to that time, there was no encumbrance upon the property which was a general lien upon it?

A. Yes.

Q. Now, after 1881, what was the next encumbrance that was placed upon the property which was a general lien?

A. There was a second mortgage issued in 1883, to an amount of $20,000,000, of which were outstanding June 30, 1896, $19,216,000.

Q. Had the full amount of twenty millions of bonds been issued under that?

A. Yes; the difference between the amount outstanding in 1896 was $784,000. Whether those $784,000 were retired or canceled, I am not able to say without looking up, or whether they were in the treasury of the Company; it was not a very large amount.

Q. Was there at the time of the appointment of receivers a third encumbrance upon the property?

A. Yes.

Q. It was a general lien. What was that? and give its date.

A. It was in 1887, an issue of $11,461,000; all of which were outstanding June 30, 1896.

Q. Was there a fourth incumbrance upon the property?

A. In 1889 there was a consolidated mortgage created,

which was intended, in addition to retiring the others, to provide funds for other purposes.

Q. How much was that mortgage?

A. The total amount issued was $48,867,000, all of which were outstanding June 30, 1896.

Q. What was the object of that issue of bonds under the consolidated mortgage?

A. There is a long preamble here of several pages of the mortgage; I don't know how to condense it so as to get it into a simple answer.

Q. Was it to consolidate into one company the various railroad companies acting as feeders to the Northern Pacific system?

A. That was part of it.

Q. Now, in 1893, at the time the receivers were appointed for the Northern Pacific Railway Company, the Northern Pacific system consisted of fifty-four corporations?

A. Yes; or, to be more exact, I would say that when the plan of reorganization was issued in March, 1896, that was the number of corporations. It probably was exactly the same, but I wish to be more exact.

Q. Those corporations were all railroad corporations, were they not?

A. I believe so. I have here on page 17 of the plan of reorganization a statement of the lines on which the consolidated mortgage was a first lien as well as of the lines on which it was a fourth lien.

Q. I forgot to ask, but I believe the consolidated mortgage was the last mortgage issued prior to the receivership of 1893, was it not?

A. Yes.

Q. What I asked you was whether or not these fifty-four corporations were railway corporations.

A. I would have to take a little time to identify fifty-four.

I have got before me here a list of corporations which are all railroad corporations and covered by this consolidated mortgage. The reason I speak of that is this: that the Northern Pacific had properties that were not railroad corporations.

Q. Well, they were, in the main railroad corporations?

A. Oh, in the main—the great bulk of the value of the property was railroad mileage.

Q. State whether or not the capital stocks of those corporations were owned by the Northern Pacific Railroad Company at the time of the appointment of the receivers in 1893.

A. Not all of them.

Q. With what exceptions?

A. Of the Helena & Red Mountain Railroad Company, $196,000 of stock was in the hands of the public.

Q. What was the total?

A. The total amount issued and outstanding of that stock was $400,000; $204,000 was in the Northern Pacific treasury. Of the Little Falls & Dakota Railroad Company, $3,150 of stock was in the hands of the public.

Q. Will you give the totals in each case?

A. $1,459,857.50 were in the hands of R. G. Ralston and Farmers Loan & Trust Company, account of sinking funds and stock trusts; and 350 shares were in the treasury of the Northern Pacific Company, making a total issue of $1,463,357.50.

Q. Who owned the stock which was in the hands of the trust company which you have described?

A. I suppose it really belonged to the Railroad Company, the Northern Pacific.

Q. Go on, please.

A. Of the Seattle, Lake Shore & Eastern Railway Company $986,050 of stock was in the hands of the public; in the treasury of the Northern Pacific Railway Company, $3,-

162,650; and in the treasury of the Seattle, Lake Shore & Eastern Company there were $1,300 of stock; making a total amount issued and outstanding of $4,150,000. Of the stock of the Montana Union Railway Company, $425,000 was in the hands of the public and $425,000 in the treasury of the Northern Pacific Railway Company, making a total of $850,000 issued and outstanding. That, I believe, is all the stock that was in the hands of the public.

Q. Will you please turn to the first railway corporation organized in connection with the Northern Pacific system and being one of the fifty-four companies of which we have been talking?

A. Can you give me the name of it?

Q. No; I thought you could tell me which one was organized first. Are they in your book there in chronological order?

A. No. I can give them to you in the order in which they are covered by the consolidated mortgage, but whether that is the chronological or genealogical order, I am unable to say.

Q. Take them in the order in which they appear in the mortgage.

A. The first one is the Little Falls & Dakota Railroad Company.

Q. Where is that road located?

A. It is organized under the laws of Minnesota, authorized to build a railroad from the town of Little Falls, in the county of Morrison, via Sauk Center, Glenwood, Lake Whipple and Morris, to the western boundary line of the state, with a branch road from Little Falls to the eastern boundary line of the state in the direction of Lake Superior, all in Minnesota; of which railroad 87.85 miles had been built at the time this mortgage was prepared.

Q. What is the date of the organization of the Company?

A. I don't think I have anything with me that shows the date of the organization.

Q. What is the amount of the authorized capital stock of the Company? A. Its authorized capital stock is $2,000,000, of which at the time of this mortgage 29,267.15 shares have been issued, but the shares were only $50 each.

Q. That made an issue of how much in dollars and cents?

A. I have already given the amount of the stock.

Q. Is that one that the public holds any interest in?

A. Yes; the public held $3,150 of the stock.

Q. Well, of the two million authorized capital, how much was owned by the Northern Pacific at the time the receivers were appointed in 1893?

A. Assuming that they owned the stock in the hands of the trustees, they owned all but $3,150 of the stock.

Q. What had the Northern Pacific Railroad Company paid for that stock prior to the appointment of the receivers in 1893?

A. The Northern Pacific issued consolidated mortgage bonds on account of the Little Falls & Dakota Railroad Company $1,757,000.

Q. Do you mean by that, Mr. Gray, that the proportion of the consolidated mortgage bonds assigned to the Little Falls & Dakota Railroad Company was $1,700,000?

A. $1,757,000.

Q. When those bonds were issued, the particular bonds to which you now refer, were they placed upon the market by the Northern Pacific Railroad Company, or were the bonds themselves delivered to the Little Falls & Dakota?

A. That I am unable to answer from the records that I have here.

Q. The proceeds of those bonds, or so much as were necessary, were used in the construction and equipment of the Little Falls & Dakota Railroad?

A. The Little Falls & Dakota Railroad had been, as I understand it, constructed before this.

Q. Had the Little Falls & Dakota Railroad Company ever made an issue of bonds?

A. Yes.

Q. How many issues of bonds were made by that company independently?

A. The Little Falls & Dakota Railroad Company issued $1,577,429 of bonds, which were put up under the consolidated mortgage.

Q. Well, were those bonds sold to the public?

A. No.

Q. What was done with them?

A. They were held as security for the mortgage.

Q. Held as additional security for the bonds issued under the consolidated mortgage?

A. Yes, sir.

Q. In whose possession are those bonds?

A. In the possession of the Mercantile Trust Company, of New York, trustee for the prior lien mortgage.

Q. Then, no cash was received from the sale of those bonds, they have never been sold?

A. I believe not.

Q. Well, from what source was the cash received from which the road was built and equipped?

A. There was a company called the Oregon & Transcontinental Company, which built a number of branch lines; whether this was one of them, I am unable to say, off hand; I have a memorandum that the following roads were built by the Oregon & Transcontinental Company: The Little Falls & Dakota railroad—

Q. Probably that is sufficient now. This Company to which you refer as having built the Little Falls & Dakota was a construction company, was it?

A. That company was formed with the proceeds of the "blind pool" of 1881.

Q. Well, was it a construction company or a financing company?

A. I think both.

Q. The company was paid for the construction of this road?

A. You mean this Oregon & Transcontinental Company?

Q. Yes.

A. Yes, it was paid by the issue of consolidated mortgage bonds.

Q. That is what I wanted to get at.

A. Yes.

Q. Were all of the consolidated mortgage bonds which you say were issued on account of the Little Falls & Dakota road transferred to the Oregon & Transcontinental Company for $1,750,000?

A. I would have to go to my books for that.

Q. Well, you might make a memorandum of that, if you will. And in consideration of the delivery to the Oregon & Transcontinental Company of such portion of the consolidated mortgage bonds as was considered or agreed to be proper, the capital stock of the Little Falls & Dakota Company, to the amount you have already mentioned, was delivered to the Northern Pacific Railroad Company?

A. Yes.

Q. And, in addition, the bonds of the Little Falls & Dakota Company, to the extent of $1,500,000?

A. Yes, $1,577,429.

Q. That road, the physical property of that company, (the Little Falls & Dakota Company) is now a part of the property of the Northern Pacific Railway Company?

A. Yes.

Q. Acquired under the foreclosure proceedings in 1896?

A. Yes.

Q. And a part of its roadbed, right-of-way and equipment is a part of the property, the value of which we are endeavoring to determine in this proceeding?

A. Yes.

Q. And upon which property it is insisted that the stockholders are entitled to a return after payment of interest upon the bonds?

Mr. How: Well, you don't know anything about what the stockholders insisted upon, do you?

WITNESS: That is what I was going to say. I don't know what is insisted.

Mr. How: That is not the stockholders' claim at all.

An adjournment was here taken until the morning of June 24, 1908, at 10 o'clock.

On Wednesday, June 24, 1908, the hearing was resumed.

H. A. GRAY,

recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. Mr. Gray, you stated yesterday that the Little Falls & Dakota railroad was constructed by the Oregon & Transcontinental Company?

A. Yes.

Q. Is that the proper name, Oregon & Transcontinental Company?

A. Yes.

Q. Will you tell what that company was?

A. I can't tell very much about it more than I told yesterday. It was a company formed by Mr. Villard and his friends, as the result of the "blind pool" of 1881, with a view to getting

in one company the control of the Northern Pacific and the Oregon Railway & Navigation Company; and I know from our records that afterwards it constructed a number of branch lines which were sold (I suppose is a proper enough word) to the Northern Pacific Railroad Company.

Q. The Northern Pacific Railroad Company held none of the stock of the Oregon & Transcontinental Company?

A. I believe not.

Q. And holds none of it now?

A. I don't know whether the company is in existence. I know absolutely nothing about that company now.

Q. Well, you know that the Northern Pacific Railway Company owns none of its stock?

A. I have never seen, in any record or in any of the papers that grew out of the re-organization, any evidence that a single share of the stock of that company was ever owned by the Northern Pacific Railroad Company.

Q. Will you now give me the name of the next branch line in Minnesota which originally was organized as an independent railroad company, but is now owned by the Northern Pacific Railway Company?

A. I think there were only two in Minnesota. I believe it was the Northern Pacific, Fergus & Black Hills Railroad. (Examining memoranda.) Yes, there were more than two. Have you special reference to the roads that were built by the Oregon & Transcontinental Railroad Company?

Q. No sir. What I desired were roads that were built originally by separate companies, and which now have become a part of the Northern Pacific Railway Company's properties.

The MASTER: Limited to Minnesota?

Mr. O'BRIEN: Yes.

A. The Northern Pacific, Fergus & Black Hills Railroad Company.

Q. Will you describe that railroad?

A. A company "organized under the laws of Minnesota and authorized to build a railroad from a point on the Northern Pacific railroad at or near Wadena, in Otter Tail county, via East Battle Lake and Fergus Falls to the western boundary line of the state; thence to the Black Hills, in Dakota, with a branch from Fergus Falls up the Pelican valley, to the northern boundary line of Otter Tail county, thence to the Northern Pacific railroad; and with another branch from point on its main line in East Battle Lake through the counties of Douglas and Pope to Benson in the county of Swift; and another branch from a point on its main line east of Fergus Falls, via Otter Tail Lake, Perham and Red Lake Falls, to the northern boundary line of the state of which railroad 117.10 miles have been built and are now in operation."

Q. That is all within the state of Minnesota?

The MASTER: So far as constructed?

Mr. O'BRIEN: As far as constructed.

A. The Fergus Falls branch, 74.97 miles in Minnesota and 74.53 miles in North Dakota. Then, my former figures were not correct as to the amount built. 117.10 miles was the mileage built at the time that the consolidated mortgage was drawn. Upwards of 149 miles in operation now.

Q. At the date of the receivership proceedings in 1893, how many miles of road had been built?

A. I am a little perplexed about that question of mileage, because the report that was issued to the stockholders in 1896 shows only 117 miles of that road built, while our present mileage shows nearly 150 miles in operation.

Q. Well, at the time of the execution of the consolidated mortgage, the mileage was 117 miles?

A. Yes.

Q. Now, who had actually built and constructed that amount of the road?

A. I believe it was constructed by the Oregon & Transconti-

nental Company or by a predecessor of that company. There was an agreement by which the Oregon & Transcontinental Company was declared to be lawfully empowered and authorized and possessed of the necessary means, money and credit to construct and complete the said railroad.

Q. What was the capital stock issued by the Northern Pacific, Fergus & Black Hills road at the date of the appointment of the receiver in 1893?

A. Fifteen millions.

Q. And who held that stock?

A. It was in the treasury of the Northern Pacific Railroad Company.

Q. Had the Northern Pacific Railway Company paid anything for it?

A. They paid for the bonds, I believe, an amount in excess of their face, and the stock.

Q. What bonds?

A. They issued consolidated bonds for $2,342,000 of the bonds of the Northern Pacific, Fergus & Black Hills Railroad.

A. Well now, let us get that straightened out. Had the Northern Pacific, Fergus & Black Hills Railroad issued any of its own bonds?

A. Yes.

Q. How much?

A. That amount,—$2,342,000.

Q. And what was done with those bonds?

A. They were turned over to the Northern Pacific for consolidated mortgage bonds.

Q. Then a certain portion of the consolidated mortgage bonds were delivered by the Northern Pacific Railway Company in exchange for the fifteen million dollars capital stock and the $2,342,000 of bonds of the Northern Pacific, Fergus & Black Hills Railroad?

A. Yes, substantially that. Of the most of these roads that

were built by the Oregon & Transcontinental Company the stock was held in escrow, to be taken up either on the acquisition and retirement of the bonds themselves, or a sinking fund was provided by which it might be done, but the effect was that the stock could not be held by the Railway Company in most cases, as I read yesterday, that the Little Falls & Dakota was held by the trustees until the bonds were gotten out of the hands of the public, if any of them had got in, so that both would not be, as it were, a lien or a representative of the property.

Mr. How: And then to become the absolute property of the Northern Pacific?

WITNESS: Yes.

Q. When was this transfer of the consolidated mortgage bonds of the Northern Pacific for the stock and bonds of the Northern Pacific, Fergus & Black Hills Railroad Company made?

A. I can't give you the exact date from the records that I have here.

Q. But within a year?

A. I think it was about 1883.

Q. About 1883?

A. No, about 1892 or 1893; oh, no, it was before the receivership.

Q. That is all I care to know; before the receivership.

A. Oh, yes.

Mr. How: Well, it was after the date of the consolidated mortgage, which was December 2, 1889, and before the receivership. It was before the receivership; it was in the early nineties.

Q. After the date of the consolidated mortgage and before the receivership?

A. Yes.

Q. And has the property of the Fergus Railroad Company been transferred to the Northern Pacific Railway Company?

A. Yes; I will say so I understand. I know, as a matter of knowledge, that the great mass of these underlying properties were all formally and legally transferred to the Northern Pacific Railroad Company, and I believe that to have been one of them.

Q. Do you know whether the corporate franchise of the Fergus company has been surrendered?

A. I do not, and I think not, for the reason that these bonds and stocks are all held by the Mercantile Trust Company as muniments of title, I suppose a sort of additional security, under the prior lien mortgage of the Northern Pacific Railway.

Q. Now, I am not sure whether I asked you yesterday how many miles of railway in Minnesota were constructed under the charter of the Little Falls & Dakota road which you yesterday described.

A. The Little Falls & Dakota branch in Minnesota had 87.94 miles.

Q. And the Fergus branch, which we have just been speaking of, I believe 73 miles?

A. 74.97 miles.

Q. What is the next branch line in Minnesota constructed under a corporation other than the Northern Pacific Railroad Company?

A. There was the Northern Pacific & Manitoba.

Q. Now, if you will, Mr. Gray, concisely describe the location of that road, and when it was organized.

A. My impression now is that all of that line was either in Manitoba or in Manitoba and North Dakota, and not in Minnesota. Its lines were leased to the province of Manitoba and are now operated by the Canadian Northern. The Duluth & Manitoba Railroad Company had two million dollars of stock, which were held in the Northern Pacific Railway Company's treasury, and are now deposited with the Mercantile Trust Company as trustee under the prior lien mortgage, and it

had bonds issued by the Minnesota division in the hands of the public $1,650,000; for the Dakota division, $1,451,000. Those bonds at the time of the re-organization had not been acquired by the Northern Pacific Railway Company. My impression is that they were, subsequently, by purchase, and that they are now muniments of title; but at the time these records were made up that I have in hand, they were not. I find, for instance, that the re-organization managers paid $1,626,254.79 to acquire bonds of that road.

Q. Well, how many miles of road had that?

The MASTER: What road do you refer to now?

Mr. O'BRIEN: The Duluth & Manitoba.

A. 206.75 miles had been built at the time of the consolidated mortgage. The Company had issued two series of first mortgage bonds, as already stated, on the Minnesota division, and on the Dakota division, respectively, in the amounts given.

Q. And a certain portion of the bonds issued under the consolidated mortgage were used for the purpose of purchasing that road?

A. My records fall short in regard to that; I mean what I have with me here. I thought I had agreements covering all of those roads with me. My answer to that is, I don't know. As I have already stated, the re-organization managers paid out so much money to secure possession of the bonds, but just where they got that money from, I am not able to say without looking a little deeper.

Q. Now, is it true that, so far as the branch lines outside of the state of Minnesota, which were originally constructed by independent corporations and which were purchased or taken in at the time of the issuance of the bonds secured by the consolidated mortgage, that the transaction was practically similar to the transactions in Minnesota which you have described, the only difference being the length of the road, the amount of

the bonds and the physical differences connected with the branch line?

A. Only seven of the branch roads were built by the Oregon & Transcontinental Company; and these roads were all treated practically alike in regard to the way in which they were taken over and in which they were paid for. As to the roads that were built by others than the Oregon & Transcontinental Company, or than by the Northern Pacific itself, that I would have to look into further. I read into the record yesterday the stocks that had got into the hands of the public, of all branch roads that were in existence at the time of the re-organization. I suppose that is what you have special reference to,—as to what roads were purchased with bonds and what was received, stock and bonds, for those roads.

The MASTER: That is, the consolidated mortgage bonds were used to purchase the stock and bonds of these branch lines which were in the hands of the public, do I understand that?

WITNESS: Or in the hands of the builders.

The MASTER: Yes.

WITNESS: The consolidated mortgage explains all that, Mr. O'Brien, in regard to a good many of them, just exactly what was done. I think there were twenty-one of those various branch lines covered by the consolidated mortgage, and it recites the location, the length of each, the capital stock outstanding, and the bonds outstanding, and then there is a schedule of consolidated mortgage bonds amounting to nearly twenty-six million dollars, set aside under this trust deed for the purchase of those bonds and stocks.

Q. Will you give the names of the roads (branch lines) constructed by the Oregon & Transcontinental Company, which you say were built and purchased in a manner similar to the Little Falls & Dakota-Minnesota property?

A. You have, already, the Little Falls & Dakota and the Northern Pacific, Fergus & Black Hills. The Fargo & South-

western Railroad was built in the same way; the Helena & Jefferson County railroad was built in the same way; the Jamestown & Northern was built in the same way; the Sanborn, Cooperstown & Turtle Mountain railroad was built in the same way; and the Rocky Mountain railroad of Montana; making seven.

Q. You say you are not able to give the details of the purchase of any of the other branch lines?

A. Except as shown by the consolidated mortgage.

Q. Now, does the consolidated mortgage contain a list of all of the branch lines?

A. No, only such branch lines as were to be acquired by the issue of consolidated mortgage bonds.

Q. Only such branch lines as were owned by one of the independent corporations to which we have been referring, one of these fifty-four corporations?

A. I don't understand you.

Q. Well, at the time of the appointment of the receiver in 1893, the Northern Pacific system consisted of lines of railway which were controlled by fifty-four different corporations.

A. There were more than lines of railway; there were land companies and other things.

Q. Yes, land companies and lines of railroad, but the entire system consisted of fifty-four corporations, did it not?

A. That is what is stated in the plan of re-organization.

Q. Many of these corporations had been organized for the purpose of building one particular branch line of railway—a feeder?

A. Yes.

Q. And a part of the re-organization plan of 1896 consisted in eliminating these independent corporations and putting the title to the property all in one corporation, which was to be known as the Northern Pacific Railway Company?

A. Yes.

Q. The present company operating this railroad system?

A. Yes.

Q. Now, I ask you if the consolidated mortgage contains a list of all of these branch lines or feeders now a part of the Northern Pacific Railroad property, which at the date of the consolidated mortgage, were under control of separate and independent corporations, each of such corporations being one of the fifty-four corporations making up the Northern Pacific system?

A. No; the consolidated mortgage only gives a list of twenty-three roads.

Mr. HOW: Don't misunderstand the question, Mr. Gray. The question implies that these railroads were under control of those separate organizations. That is not the fact, is it? They were being operated by the Northern Pacific, which had guaranteed the bonds?

WITNESS: Oh, that is the point, is it?

Mr. O'BRIEN: No, that is not the point at all.

Mr. HOW: No, I think perhaps you did'nt understand, and the form of the question was such—

WITNESS: The question asked as to whether the mortgage gave a list of the roads?

Q. Yes.

A. And my answer is that there are only twenty-three roads listed in the mortgage.

The MASTER: Does that mortgage cover other than railroads?

WITNESS: It was intended as a blanket mortgage to retire the previous existing mortgages and also to provide for a number of other things. Some of it was to pay for equipment; and it was intended generally to take the place of the previous indebtedness of the Company and ultimately to become a prior lien on all property of the Company.

The MASTER: Just when was that given?

WITNESS: The mortgage was dated December 2, 1889.

Q. Will you give the list of the railroad companies contained in the consolidated mortgage to which you have referred?

A. I hand the Reporter a copy of the mortgage from which he can draw off a list of the roads, on page 35.

The list is as follows:

Little Falls and Dakota Railroad Company, $1,757,000.

Northern Pacific, Fergus and Black Hills Railroad Company, $2,342,000.

Fargo and Southwestern Railroad Company, $1,748,000.

Jamestown and Northern Railroad Company, $2,050,000.

Sanborn, Cooperstown and Turtle Mountain Railroad Company, $730,000.

Rocky Mountain Railroad Company, $1,034,000.

Helena and Jefferson County Railroad Company, $402,000.

James River Valley Railroad Company, $963,000.

Duluth and Manitoba Railroad Company (Minnesota division), $1,650,000.

Duluth and Manitoba Railroad Company (Dakota Division), $1,451,000.

Southeastern Dakota Railroad Company, $133,000.

Northern Pacific, La Moure and Missouri River Railroad Company, $318,000.

Jamestown and Northern Extension Railroad Company, $270,000.

Spokane and Palouse Railway Company, $1,557,000.

Helena and Red Mountain Railroad Company, $400,000.

Northern Pacific and Montana Railroad Company, $4,756,000.

Cœur d'Alene and Navigation Company Firsts, $360,000.

Cœur d'Alene and Navigation Company Consols, $627,000.

Spokane Falls and Idaho Railroad Company, $270,000.

Northern Pacific and Cascade Railroad Company, $208,000.

Northern Pacific and Puget Sound Shore Railroad Company, $1,020,000.

Central Washington Railroad Company, $1,750,000.

Cleelum Railroad Company, $68,000.

Total, $25,864,000.

Q. At the time of the institution of the receivership proceedings in 1893, had the Northern Pacific Railroad Company acquired all of the stocks and bonds of the fifty-four corporations which have been described as making up the Northern Pacific system, with the exception of the stocks in the hands of the public, to which you referred yesterday?

A. They had not. I find that at the time the plan of re-organization was issued, there were a number of bonds issued by the ten companies named here, the holders of which were requested to communicate with the bankers in New York or in Berlin, giving the amount of their holdings and stating whether held in bonds or certificates of deposit.

Q. Can you give us the aggregate amount of those bonds so outstanding?

A. I said ten roads,—one of them was in two states, shown in two items in the list I counted from. The aggregate stock in the hands of the public of the nine roads in question was $1,182,050; the total bonds in the hands of the public, $20,157,000.

Q. With those exceptions, the Northern Pacific Railroad Company, at the time of the appointment of the receivers in 1893, owned and held all of the bonds and stocks of the fifty-four corporations described as making up the Northern Pacific system?

A. Probably. The date from which I am quoting is March, 1896. I don't know of any important change in ownership during the interval, but at the time the plan of re-organization was submitted to the security holders, those seem to be all the bonds and stocks in the hands of the public of railroad lines. Of course, when I say that—there were the bonds of the Company itself, equipment notes, and so on.

Q. You mean of the Northern Pacific?

A. Of the Northern Pacific, yes.

Q. I am not speaking of that, I am speaking of the fifty-four corporations other than the Northern Pacific. Have you ascertained, since yesterday afternoon, whether or not any cash was ever paid on account of the preferred stock to the Northern Pacific Railroad Company prior to the appointment of the receivers in 1893?

A. I left a man at work on that when I came up this morning. I had satisfied myself that the total preferred stock was not, by any means, issued to the holders of the bonds, that there were several millions used for other purposes, and I left a man trying to classify and get them out. There were items running for a series of years, a great many of them, through three large ledgers.

Q. With the exception of any cash which you may discover to have been paid for the preferred stock of the Northern Pacific Railroad Company between the re-organization of 1875, and the receivership proceedings of 1893, is it not true that all of the funds for the construction, maintenance, equipment and operation of the Northern Pacific Railroad Company, its branches and the other corporations which we have referred to as forming a part of the Northern Pacific system, and the properties of those companies, were paid for from the proceeds of the lands granted to the Northern Pacific Railroad Company by Congress in the act of 1864, and the proceeds of the bonds, issued as you have described?

Mr. How: That is objected to as immaterial. I don't want to make objections, but I want to save a point once in a while. The purport of the question seems to be to show that the present stockholders of the Northern Pacific Railway Company never paid any money for that stock, but that they availed themselves of the land-grant to construct the road, which was, of course, the purpose of the United States government in making the grant. It is immaterial; no basis of reasonable return can be made upon the actual cost to the stockholders by the con-

struction of the road.

The MASTER: Objection noted.

A. My answer is, not exclusively. While, unfortunately, I am not able to furnish a statement of receipts and expenditures, there have been various indications that money was put up by somebody for certain purposes. For instance, I have seen a reference to what is called six per cent stock. I have only been with the Company, myself, since the last receivership. I have asked men who have been with the Company nearly since the former receivership, and I have not been able to find out yet what that six per cent stock was, but there are evidences that satisfy me that some money was put up that was used for various purposes incident to the organization and exploration of the Company before the issue of the 7.3 per cent bonds.

Q. Mr. Gray, you are the Comptroller of the Company?

A. I am.

Q. That is, you are at the head of the entire accounting department of the Company, are you not?

A. I am.

Q. Every account book, every record of the Company, is under your charge, directly or indirectly?

A. Yes.

Q. Yesterday you referred to the fact that Mr. Whitney, one of the original projectors of the Northern Pacific Railway system, had died in poverty.

A. Yes.

Q. And that Mr. Perham, another promoter, had met with a similar fate?

A. Yes, sir.

Q. Do you know, or can you give, from the books of the Northern Pacific Railroad Company, a single instance where any person, prior to the receivership proceedings of 1893, paid a dollar for his stock in the Northern Pacific Railroad Company, or made any investment, except by the purchase of bonds

in, for, or on behalf of that Company, which has not been returned?

Mr. HOW: Same objection.

The MASTER: It will be noted.

A. I have no books of account which show any such state of facts.

Q. Can you take the various bond issues of the Northern Pacific Railroad Company, from the first bond issue, (made pursuant to the resolution of Congress of 1869) and give the prices at which the bonds were sold?

A. You refer to the bonds issued since the first re-organization?

Q. No, before the first re-organization, beginning with 1870.

A. The only bond issue was this 7.3 per cent mortgage bond, and I have no record of the prices for that.

Q. That was the first issue?

A. That was the first issue. The bonds since that time, I am able to give the issues and the amount of money received for each.

Q. Have you information as to what those 7.3 per cent bonds were sold for in 1870?

A. I have only in a general way the understanding that there was something over twenty-eight million dollars. I do not state that as an accurate amount of cash received from what were sold. I think there were nearly thirty-two millions sold, perhaps more. I might possibly be able to get closer figures on that.

Q. The other bond issues are possibly more important.

A. The general first mortgage bonds—the amount issued was $48,943,000. The cash realized on the amount issued was $44,135,290.80. The general second mortgage bonds, $20,000,000 were issued and realized $16,485,987.76. The general third mortgage, $11,461,000 were issued and realized $9,197,921. The consolidated, $48,867,000 were issued and realized $42,136,-

751.62. Missouri Division bonds, $2,500,000 were issued and realized $2,499,738. The Pend d'Oreille mortgage, $4,500,000 issued, realized $4,325,599.75. There were dividend certificates extended of the amount of $4,640,821.20. There is no difference between the amount issued and realized on those. Then there were collateral trust notes issued to the amount of $9, 494, 000, on which were realized $9,007,950. That was the entire issue funded debt of the Northern Pacific Railroad Company after the first re-organization.

Q. In giving the amount realized by the sale of the bonds secured by the consolidated mortgage, you have estimated that the bonds and stocks of other railway corporations for which the bonds secured by the consolidated mortgage were exchanged were taken at par.

A. That was before my time; I would rather not answer that question until I look into it a little.

Q. At the time of the re-organization in 1896, what was the total indebtedness of the Northern Pacific Railroad Company?

A. You mean the funded indebtedness.

Q. No, I mean the total indebtedness.

A. Including accounts of all kinds, the total indebtedness, exclusive of the capital stock, was $181,589,375.38. That was on June 30, 1896.

Q. Was that more or less than the indebtedness existing at the time of the appointment of the receivers?

A. It would be more.

Q. Can you, in round numbers, tell us how much more?

A. No.

Q. At the time of the re-organization in 1896, how many acres of the land-grant made by Congress to the Northern Pacific Railroad Company remained unsold?

A. That cannot be answered closely, for the reason that the estimate that was made at that time was found to be too high and an adjustment had to be made afterwards. Mr. Cooper

could explain why that adjustment was necessary better than I can, but it came in various ways: That there were certain lands that we counted we were entitled to in sections that were reserved for other purposes and we could not obtain them, they could not be patented to us.

The MASTER: Weren't there lieu lands?

WITNESS: In some cases there were, but I am not an expert on that matter. But I have heard it explained and stated that it was very difficult to make a close estimate. I know that in one of the years since then the amount was scaled down very considerably. The annual reports show, from year to year, the estimated amount of lands to which the Company was entitled.

Q. What was the estimated amount?

A. The lands that were shown in the first report of the reorganized company in 1897—it was then estimated that we had acquired, at the foreclosure sale of September 1, 1896, 31,034,233 acres.

Q. And at what value was that estimated?

A. There was no money value put upon them.

Q. Are you able to say what that land was worth?

A. No. Of course, a statement could be made showing what we received for what has been sold since then, but I could not give any estimate.

Q. You couldn't give any general statement?

A. No.

Q. Did that include the coal lands?

A. Prior to that time the principal coal properties—what are known as the Roslyn coal properties—had been segregated from the land-grant.

Q. The Northwestern Improvement Company had been organized prior to this time, had it?

A. No, the Northwestern Improvement Company was organized, I believe, in 1897. It was organized practically as part of the proceedings. The whole thing was not done in a day.

Q. But the coal lands had been segregated prior to that time?

A. Prior to that time, yes.

Q. So this estimate of thirty-one millions of acres of lands includes no mineral lands?

A. Except as we may find that there are coal lands in them, by exploration or otherwise.

Q. But it includes no lands in which minerals were known to exist?

A. Well, it was understood that there were other lands adjacent to this Roslyn coal-field which probably had coal under them.

Q. It does not contain any of the known and explored Roslyn coal-fields?

A. No.

Q. Nor any of the lands now held by the Northwestern Improvement Company as coal lands?

A. Not to any considerable extent.

Q. Were the coal lands segregated before or after the plan of re-organization had gone into effect?

A. Before.

Q. Not as a part of the plan?

A. I think that the company that owned the coal lands was one of the fifty-four companies.

Q. And the stock of which was held by the Northern Pacific Railroad Company?

A. Yes.

Mr. HOW: Northern Pacific Coal Company, was it not?

WITNESS: The Northern Pacific Coal Company was the name of it, yes.

Q. Was there any separate division made of timber lands?

A. No, not that I know of now. There were a number of small companies organized, which seem never to have amounted to anything, and I am rather hazy as to the purpose of their

organization, but we have no company now that holds any body of timber land, and I don't know that we ever had.

Q. Are you able now to give an estimate as to the amount of lands which actually were acquired under the foreclosure proceedings in 1896?

(No answer.)

Q. You have given the estimate in the report of 1897, but you said—

A. But I read the figures as being of 1896.

Q. I know, but you say that that estimate was incorrect.

Mr. HOW: Have you the land records in your custody?

WITNESS: Only the bookkeeping records, not the records of acreage, etc.

Mr. HOW: Then you are not testifying from your own records and your own knowledge, if you testify at all?

WITNESS: The only testimony I could give would be from the reports of the Company, and that question could be answered much better by Mr. Cooper or some of his subordinates.

Mr. O'BRIEN:

Mr. COOPER is not here and it is rather confusing to have these statements given by so many different witnesses.

Mr. HOW: I am willing he should testify to anything that the records disclose, if it is understood what he is doing.

Q. You are using the reports of the Company in making these statements?

A. The reports made by the Company to its stockholders.

Q. And the items of that report are received from the heads of the various departments?

A. Yes.

Mr. HOW: I do not object as long as it is known what he is doing.

Q. What would be, in your judgment, a fair estimate as to the amount of that land?

A. I have no amount in my mind from which I could make an answer.

Q. The properties of the Northern Pacific Coal Company were received after the foreclosure proceedings?

A. Yes.

Q. What was the value of those properties?

Mr. How: You are asking now as to what the reports show as to the value of the coal properties in 1896?

Mr. O'BRIEN: No.

WITNESS: I shan't attempt to give you values.

Q. Mr. Cooper's judgment on that would be better than yours, you think?

A. As to the value of the properties?

Q. Yes.

A. It ought to be much better.

Q. Mr. Cooper testified that their present value was fifty millions of dollars in his judgment.

A. That is a lot of money.

Q. The value of those properties is practically the same now as it was in 1896, isn't it?

A. Oh, we have mined a great many hundreds of thousands of tons of coal since then. Of course, a coal property is something like cash in a bank, it is being reduced all the time.

Q. So the properties are not worth as much now as in 1896?

Mr. How: Mr. Gray, do you know anything about the values of the coal property? If you don't, I prefer you should say so.

WITNESS: I do not.

Mr. How: Would you set up your opinion against Mr. Cooper's, on the value of those coal properties?

WITNESS: Not for one moment.

Q. Under the foreclosure proceedings were there not acquired a large number of land contracts or bills receivable, on account of lands sold, which had not been completely paid for?

A. There was an amount.

Q. Can you give us a statement of that amount?

A. The nearest date to which I can give you that at present would be June 30, 1897, ten months after; but I could give you, this afternoon, the figures as of September 1, 1896.

Q. Mr. Gray, would it be more convenient for you to make a tabulated statement of the properties acquired under that foreclosure proceeding? I don't mean a tabulated statement, I mean a statement of the properties acquired.

A. The plan of reoganization gives a statement of the properties acquired.

Recess until 2 P. M., the examination to be conducted at the Comptroller's office of the Northern Pacific Railway Company.

AFTERNOON SESSION.

Q. After the reorganization in 1896 and the taking over of the properties of the Northern Pacific Railroad Company by the Northern Pacific Railway Company, was there in that year a report made to the stockholders of the Northern Pacific Railway Company?

A. The first report of the stockholders of the Northern Pacific Railway Company was of June 30, 1897, covering the ten months.

Q. Have you that report?

A. I have.

Q. Will you please turn to it and state what, according to that report, was the aggregate value of the assets of the Northern Pacific Railway Company?

A. When you say "value", of course you mean the book value?

Q. Well, the value as stated in that report of the aggregate assets of the Northern Pacific Railway Company.

A. As stated in the balance-sheet of the Company June 30, 1897, the aggregate assets of the Railway Company were $320,973,814.11.

Mr. HOW: What report is that, Mr. Gray?

WITNESS: This is the first report to the stockholders of the Northern Pacific Railway Company made as of June 30, 1897.

Q. And what were the liabilities of the Company at the same time, exclusive of capital stock?

A. $165,483,985.21.

Q. Will you, if you can do so conveniently, give the list of those liabilities, in classes?

A. I shall be glad to do so. There were mortgage debts issued by the Railway Company, prior lien bonds, $74,812,500; general lien bonds, $56,000,000; Missouri Division bonds, $1,755,000; general first mortgage bonds, $15,392,000; St. Paul & Northern Pacific general mortgage bonds, $8,003,000; Western Railroad of Minnesota, first mortgage, $420,000. In the liabilities there was a general first mortgage conversion fund, being prior lien bonds reserved, as provided in the mortgage, for issue and conversion of general first mortgage bonds, of $4,617,500. There were current liabilities for payrolls, materials and miscellaneous bills, $1,769,789.06; there was an estimate of the taxes accrued, $299,739.79; there was accrued interest on mortgage debt, $447,505; matured interest, including the interest due July 1, 1897, $1,258,478; there were some reserve funds for the replacement of equipment and other property destroyed by accidents and by fire, $104,720.33; and a liquidation fund reserved for indemnification against possible liabilities of $603,753.03. That makes the total amount of liabilities as I have stated above.

Q. The reserve funds that you mention were merely charges entered upon the books for future contingencies?

A. Yes.

Q. And to that extent were entered merely as offsets against the gross assets?

A. The reserve funds for replacement of equipment was an amount charged in the accounts when equipment was destroyed,

broken up or put out of service permanently, sufficient to make good the equipment.

Q. But were not for any present liability?

A. That is so.

Q. Or any then existing liability. Of the mortgage indebtedness existing at that time, what portion of it was on account of bonds issued by the Northern Pacific Railroad Company. I do not mean to ask you what bonds were issued by the Railway Company on account, or to take up bonds issued by the Railroad Company; I ask you which of those bonds was actually issued by the Railroad Company, and which of them was actually issued by the Railway Company?

A. The bonds actually issued by the Railroad Company were the Missouri Division bonds, $1,755,000; the general first mortgage bonds, $15,392,000.

Q. The general first mortgage how much?

A. The general first mortgage, $15,392,000. Those were the only bonds issued by the Northern Pacific Railroad Company proper.

Q. The other bonds which had been issued prior to the making of this report had been issued as a part of and for the purpose of carrying out the reorganization plan?

A. In order to save confusion later, I may explain that there was $8,003,000 of St. Paul & Northern Pacific Railway bonds which were assumed, and $420,000 of Western Railroad of Minnesota bonds which were also assumed by the Northern Pacific Railway Company in the reorganization.

Q. The other bonds which you have mentioned as having been issued prior to the date of that report (which I believe was June, 1897,) were issued as a part of and for the purpose of carrying out the reorganization plan?

A. Yes.

Q. Have you the charter, in pamphlet form, of the Northern Pacific Railway Company?

A. I have; bound up in this cover.

Q. That is the only one you have?

A. That is the only one I have.

Q. The charter of the Northern Pacific Railway Company was originally granted to the Superior & St. Croix Railroad Company by the state of Wisconsin, in 1870, was it not?

A. Yes.

Q. By a special act of the legislature of that state?

A. It was by act of the legislature; I don't know whether it was special or not.

Q. The name of the corporation was changed to Northern Pacific Railway Company by resolution of the stockholders at a meeting held in the city of Madison, Wisconsin, on July 1, 1896?

A. I believe so.

Q. Do you recall the capital stock authorized by the original charter? I refer you to Section 15.

A. "The capital stock hereby created shall, in the first instance, be five millions of dollars."

Q. And by Chapter 244 of the General Laws of the state of Wisconsin for the year 1895, Section 15 of the original act granting the charter was repealed?

A. Yes.

Q. And certain other matters were also included in this Chapter 244?

A. Yes.

The MASTER: Repealed?

Mr. O'BRIEN: Section 15 was repealed.

The MASTER: The whole section.

Mr. O'BRIEN: The whole section.

Q. At the stockholders' meeting held July 1, 1896, at Madison, the authorized capital stock of the Company was increased to $155,000,000?

A. Yes.

Q. By resolution of the stockholders?

A. Yes.

Q. At that time (July 1, 1896,) was any of the original stock of the Superior & St. Croix Railroad Company outstanding?

A. I think I have a record as to that. There was stock of the Northern Pacific Railway Company outstanding that had been converted from the St. Croix Company stock. I have a book record here which shows that at a meeting of incorporators held at Superior, Wisconsin, February 4, 1871, forty-four shares common stock were subscribed by parties whose names I can give and amounts.

Q. No necessity for giving the names or amounts. What was the par value of the stock?

A. $4,400.

Q. Was any more of the stock of the Superior & St. Croix Company issued or subscribed for?

A. Stock was issued—

Mr. How: You mean by that corporation, under the name of the St. Croix Company?

Mr. O'BRIEN: Yes.

Mr. How: What is the early name of it?

WITNESS: The Superior & St. Croix.

Mr. How: While it was named the Superior & St. Croix. It is the same corporation now.

Mr. O'BRIEN: Yes, of course.

WITNESS: May I ask to have the question again. There was stock, for instance, delivered to the county of Douglas, for 3500 shares, on March 14, 1872.

Q. Well, if you could give us the aggregate issue of stock by that company prior to the time that its name was changed to the Northern Pacific Railway Company, it is all that I require.

A. The record reads "the incorporators named in the act regularly organized at Superior"—

Mr. How: Let us see, now. Can't you give the number of

shares outstanding at the time of the change to the Northern Pacific Railway Company? Have you a stock ledger of that company?

WITNESS: I suppose so; but I never had occasion to look it up. My connection with the Company begins—

Q. Well, if there was any stock outstanding, which had been issued while the name of the corporation was The Superior & St. Croix Company, what became of it?

A. Naturally it would be cancelled and stock of the new company issued in its place.

Q. Was that done?

A. That I would have to look up.

Q. Of the authorized capital stock of the Northern Pacific Railway Company, what proportion was preferred stock and what proportion was common stock?

A. Preferred, $75,000,000; common, $80,000,000.

Q. What was the par value of the original stock of the Superior & St. Croix Railway Company?

A. $100.

Q. Please state the history of the stock issues of the Superior & St. Croix Railroad Company.

A. On February 4, 1871, books for subscription to the capital stock were opened, subscriptions were made thereto to the amount of $4,400, and an assessment called thereon; on November 8, 1871, in conformity with and under the terms of a contract with the firm of Messrs. Walbridge Bros. & Sargent, of Ohio, the members of the firm subscribed for $380,000 of the capital stock of the Company. One condition of this contract was that it should be void unless the county of Douglas should, on or before November 10, 1871, subscribe for $350,000 capital stock of the Company, payable in bonds of the county. In accordance with the contracts made, the certificates of full-paid stock were delivered to the county of Douglas for 3500 shares, on March 14, 1872, and the Company received in exchange

herefor $350,000 par value in bonds of Douglas county. These onds were delivered to Messrs, Walbridge Bros. & Sargent, in ccordance with the conditions and under the terms of the con- act with them of October 13, 1871.

Mr. How: That was a contract for the construction of the ilroad, was it not, Mr. Gray?

WITNESS: Yes. Messrs. Walbridge Bros. & Sargent did but tle work under their contract, and on June 26, 1873, a tri- rtite contract was entered into between Messrs. Walbridge os. & Sargent, The Superior & St. Croix Railroad Company d the Northern Pacific Railroad Company, whereby the last med party took the place of the first named in the constuc- n contract, and the first named parties were released from ir obligations by the Superior & St. Croix Railroad Com- y. Messrs. Walbridge Bros. & Sargent also returned the nrities theretofore received by them under contract of Octo- 13, 1871, with the exception of $75,000 bonds of Douglas nty, which they were permitted to retain in payment for k done and property acquired and deeded to the Railroad mpany. Coincident with the execution of the tripartite con- t, the supervisors of Douglas county modified the contract veen the county of Douglas and the Railroad Company, d November 9, 1871, by granting an extension of time for ding the road until July 1, 1875, and also consenting to s and conditions of the agreement made with the Northern fic Railroad Company, the tripartite contract. This mod- ion, however, was not presented to the electors of the coun- or their consent, as was the original contract. The insol- of the Northern Pacific Railroad Company in 1873 pre- d anything further being done with reference to building oad, and the contract with it, *ipso facto* became nonopera- The supervisors of Douglas county filed a bill in the circuit of Dane county, Wisconsin, against all the parties to ripartite contract of June 26, 1873, and the First Na-

tional Bank of Madison, Wisconsin, which, under said contract, had been appointed trustee and custodian of certain securities, among which were $275,000 Douglas county bonds; the object being to rescind the contract, cancel the bonds to obtain cancellation of the $75,000 bonds retained by Walbridge Bros. & Sargent to have the tripartite contract declared void. As a result of the suit, upon stipulation a decree was entered March 25, 1879, cancelling the county bonds held by the First National Bank of Madison, and they were destroyed; also, cancelling the subscription of the county to the capital stock of the Railroad Company, the certificates for which were surrendered to the Company and cancelled. The stock of the Company which had been subscribed to by Messrs. Walbridge Bros. & Sargent was transferred to the Northern Pacific Railroad Company, and certificates issued as of July 29, 1873, and these certificates were deposited in escrow with the First National Bank of Madison under the terms of the tripartite contract of June 26, 1873. After the decree of March 25, 1879, these certificates were returned to the Company and cancelled. The net result of all these transactions was to leave the Company in the following position: Its capital stock reduced to the amount represented by the original subscription thereto, $4,400, with no debts, obligations or contracts, in possession of property in the shape of right-of-way and construction work performed by Messrs. Walbridge Bros. & Sargent under their contract and deeded or assigned to the Company according to the terms of the tripartite contract of June 26, 1873. The opening entry was made as of September 1, 1896. There were outstanding $4,300, a difference of one share; I don't recall what became of it now.

Q. Well, I won't bother you to look that up, Mr. Gray. I understand that forty-three shares of the Northern Pacific Railway Company stock were issued in exchange for the forty-three shares of stock issued by the Superior & St. Croix Railroad Company at or about the time of the reorganization, and as a

part of that plan?

A. That was the result. There may have been some intermediate shuffle of the shares on account of parties who acted as subscribers. That was the result.

Q. Was that common stock or preferred stock?

A. It was common stock.

Q. And the property rights which the Superior & St. Croix Railroad Company owned at this time was the property which had been deeded to it by Walbridge Bros. & Co. in consideration of $75,000 of the bonds of Douglas county, Wisconsin?

A. That is what the record shows.

Q. And that was all that was paid to Walbridge Bros. for the property deeded and conveyed by them to the Superior & St. Croix Railroad Company, and the property so conveyed and deeded to that company was all of its property and assets?

A. That is what I understand the record to show. I will also add: "The $75,000 bonds of the county in the possession of Messrs. Walbridge Bros. & Sargent, were also put in the same category as the other bonds, and this matter was compromised between the county, under legislative authority, and the firm of Messrs. Walbridge Bros. & Sargent."

Q. After the reorganization in 1896, were the remaining shares of the common stock of the Northern Pacific Railway Company issued? When I say "remaining shares", I mean after deducting the forty-three shares issued in exchange for the forty-three shares of the stock issued while the Company was known as the Superior & St. Croix Company.

A. They were distributed in accordance with the terms of the plan of reorganization.

Q. Will you please describe that distribution as it actually took place?

A. It was provided that upon completion of the reorganization, the reorganization managers, in behalf of the syndicate, were to deliver to the depositor of each share of $100 of old

common stock one share of $100 of new common stock trust certificates, in consideration of his payment therefor of $15 per share.

Q. Was that done?

A. The report of the reorganization managers shows that they received $80,000,000 of common stock. That includes, of course, the $4,300. They used for conversions and assessments $66,619,100; they sold to the syndicate $10,880,600; and had on hand at the time they made their report in 1897, $2,500,000 of the stock, which was subsequently turned into the Company's treasury, as I recollect it.

Q. The Northern Pacific Railroad Company, in 1896, had outstanding $49,000,000 of common stock?

A. Yes; the books show that $49,000,000 were outstanding at that time.

Q. The reorganization plan provided for the exchange, share for share, of the common stock of the Northern Pacific Railway Company for the common stock of the Northern Pacific Railroad Company upon the payment by the holder of the common stock of the Northern Pacific Railroad Company of fifteen dollars per share?

A. Yes.

Q. Was that done?

A. I believe so, of course, that whole matter was handled in the office of the reorganization managers, and they furnished a final report, from which I have read, of the disposition of the new securities.

Q. What did the Northern Pacific Railway Company receive for the remaining thirty-one millions of common stock?

A. Part of the provision of the plan was that the reorganization managers in behalf of the syndicate were to deliver to the depositor of each share of one hundred dollars of preferred stock fifty dollars in new preferred stock trust certificates, and fifty dollars in new common stock trust certificates, in consid-

eration of the payment therefor of ten dollars per share. A considerable portion of the new common stock was used in the retirement of the old preferred stock.

Q. There was in existence at that time about thirty-four millions?

A. About that.

Q. Of preferred stock?

A. Yes.

Q. Now, what portion of the new common stock was used for the retirement of the old preferred stock?

A. Naturally it would be about seventeen million dollars.

Q. About seventeen million dollars?

A. And that would agree with the report of the reorganization managers which states that they used for conversions and assessments $66,619,100; that would be for, say, $49,000,000 of old common, and say, $17,000,000 of preferred (at $50 a share), would be $66,000,000.

Q. And upon that there was paid to the syndicate for the benefit of the Northern Pacific Railway Company ten dollars per share for each share of new common stock so delivered?

A. For each share of preferred stock so delivered; it was ten dollars for the preferred, and fifteen dollars for the common.

Q. But I am speaking now of the seventeen millions of common stock that was used to retire the old preferred stock.

A. Well, the ten dollars was in payment for the share of preferred stock, which received a half share of common stock.

Q. Then there was nothing paid—no cash paid—on account of the seventeen millions of new common stock used to retire on old preferred stock?

A. It was paid in that way, that on account of each half share there was ten dollars paid; you can look at it either way, either as a payment in connection with the issue of the common stock, or a payment in connection with the retirement of the old preferred stock, or the issue of the new.

Q. The issue of the new preferred stock, you mean?

A. That is, a man came in with a share of preferred stock, and he got for that, fifty dollars in new preferred stock trust certificates and fifty dollars in new common stock trust certificates, on payment of ten dollars.

Q. What was the aggregate amount paid to the syndicate for the benefit of the Northern Pacific Railway Company through those means? I am now referring to the retirement of the old preferred stock.

A. The syndicate agreed to take $77,500,000 of common stock trustees' certificates; $18,765,825 of preferred stock trustees' certificates; $7,775,000 of the new four per cent prior lien mortgage bonds, and $1,172,880 of the new three per cent general lien mortgage bonds, for the sum of $19,873,830 in cash, plus any interest accrued on the bonds when delivered, and the reorganization managers acknowledged the receipt of that sum. Now, I am not able to segregate that amount so as to show how much applied on stock or how much on bonds.

Q. Estimating the bonds at par, will you please state how much of that applied upon bonds and how much upon stock?

A. You would not ask me to estimate the three per cent bonds at par? It would be many a long day before they get anywhere near it, if ever. It would be more like the thing, say, to estimate the prior lien bonds at about eighty, and the three per cent at fifty to sixty.

Q. Well, I wish you would give it, first placing the bonds at par. You have always managed to make the bonds pretty good, so far, since 1864.

A. Applying the bonds at par, would leave for the stock $10,925,950.

Q. There was delivered to the syndicate seventy-seven millions of the new common stock?

A. Yes.

Q. And how much of the preferred stock?

A. $18,767,825.

Mr. How: Who did this,—the Northern Pacific Railway Company or the reorganization committee?

WITNESS: It was through an agreement which was made between J. P. Morgan & Co., of New York, and the Deutsche Bank of Berlin, known as the syndicate managers, and J. P. Morgan & Co., as reorganization managers of the Northern Pacific Railway Company, known as reorganization managers, and the syndicate subscribers as a third party.

Q. Then I understand you to say that in exchange for the seventy-seven millions of common stock and eighteen millions of preferred stock, there was received by the Northern Pacific Railway Company, through the reorganization committee,—how much?

A. I decline to answer in that way, because I think it is most unfair to put in the bonds at par. The three per cent bonds never at any time, I think, sold above 77. The prior lien bonds have gone up to 106; they are somewhere about par now; but for some time after the reorganization the prices were exceedingly low; I think a large amount of three per cent bonds were sold at 60; I think some of the prior lien bonds were sold at 80 or 85. It would not be fair to take it for the bonds at par and say that only the remaining sum applied to the stocks.

Q. We will figure in another way then. Sixty-six millions of the common stock were delivered to the syndicate, and seventeen millions of the preferred stock were used in retiring the old stock—

A. I would like you to make that question in two parts. The answer to the part in so far as the common stock is concerned would be yes. With regard to the preferred stock I would like to remark further as to the disposition of it in the reorganization. The holders of the collateral trust notes received for the notes deposited by them under the plan twenty per cent in preferred stock trust certificates; the holders of the general second

mortgage bonds received fifty per cent in preferred stock trust certificates; the holders of the general third mortgage bonds received fifty per cent in preferred stock trust certificates; the holders of the dividend certificates received fifty per cent in preferred stock trust certificates; the holders of the consolidated mortgage bonds received sixty-two and a half per cent in preferred stock trust certificates.

Q. When you refer to preferred stock trust certificates, what do you mean?

A. I mean that a voting trust was organized to continue for five years, and the entire issue of stock was put in their hands, and they issued their certificates against that stock.

Q. So that the trust certificates were simply the evidence of the ownership of stock?

A. Exactly.

Q. To the same amount?

A. Exactly.

Q. Well now, Mr. Gray, the forty-nine millions of common stock of the Northern Pacific Railroad Company were retired by the issuance to the holders of that stock of an equal amount of the common stock of the Northern Pacific Railway Company upon payment by the holders of the Railway Company stock of fifteen dollars per share?

A. Yes.

Q. How much did that payment amount to?

A. You mean for the fifteen dollars per share?

Q. Just fifteen dollars per share for the forty-nine millions?

A. It would amount to $7,350,000.

Q. And it is fair to assume that that amount was paid by the persons to whom was issued forty-nine millions of the common stock of the Railway Company, at the time of the reorganization?

A. Approximately, yes. There may be some of that stock outstanding still.

Q. Well, if it is, it is subject to this agreement?

A. No, it isn't subject to this agreement.

Q. Oh, isn't it? Well, approximately.

A. Yes, approximately; that is why I use the word.

Mr. DURMENT: Would that be the outside amount?

WITNESS: That would be the outside amount.

The MASTER: That wiped out the common stock of the Railroad Company?

Mr. O'BRIEN: Yes, sir.

The MASTER: And it took up forty-nine millions of the common stock of the Railway Company, leaving thirty-one millions yet to be accounted for?

Mr. O'BRIEN: Yes, sir

Q. The Railroad Company at that time had issued thirty-four millions of the preferred stock?

A. In round numbers, yes.

Q. In round numbers. That was surrendered and cancelled, in exchange for seventeen millions of the common stock, seventeen millions of the preferred stock of the Railway Company, and upon the payment by the holders of the preferred stock by the Railroad Company of ten dollars per share?

A. Yes.

Q. Will you please state how much that ten dollars per share amounted to, assuming that the entire thirty-four millions was surrendered?

A. Thirty-four millions at ten dollars a share, would be $3,400,000.

Q. The result was that there was left from the total authorized capital stock of the Railway Company, fourteen millions of common stock and fifty-eight millions of preferred stock?

A. You mean five millions of preferred stock. I read into the record the disposition of the common stock issue. Would you like to have the preferred stock read in in the same way?

Q. I would rather get this this way first: The authorized

preferred stock was seventy-five millions, was it not?

A. Yes, sir.

Q. Well, we have only accounted for seventeen millions so far?

A. Yes.

Q. So that left fifty-eight millions of preferred stock and fourteen millions of common stock?

A. But I read out a list of bonds, all of which got a portion of preferred stock certificates with them, which you have not taken into account.

Q. That is what I am trying to get at now. Now, what became of that remaining fourteen million dollars of common stock?

A. Well, I will have to read over again what was done with it according to the plan. You are speaking of the preferred stock?

Q. No, I am speaking of the common stock.

A. I thought we had accounted for it. There was sold to the syndicate $10,880,900; and there was on hand $2,500,000 which was returned to the Company's treasury.

Q. Now, what did the syndicate pay for that ten million odd capital stock?

A. That is not possible to say, because there were two lots of stock and two lots of bonds turned in to the syndicate, for which they agreed to give a lump sum. I am not able to segregate it.

The MASTER: It wasn't a bonus?

WITNESS: No.

Q. And has that remaining $2,500,000 of common stock been issued?

A. It was sold several years ago.

An adjournment was here taken until the morning of Thursday, June 25th, 1908.

On Thursday, June 25, 1908, the hearing was resumed at 10 o'clock a. m., and the witness H. A. Gray was recalled for further cross-examination.

By Mr. O'BRIEN:

Q. At the adjournment last evening it was suggested that you prepare a statement with reference to the disposition of the authorized capital stock of the Northern Pacific Railway Company; have you had time to?

A. I didn't understand. The question arose as to whether that was not sufficiently detailed in the plan of reorganization, and as to the general disposition of it I was prepared to read, at that time, into the record what the report of the reorganization managers showed, which you wished deferred until you had obtained certain information in regard to it.

Q. There was delivered to the syndicate which you mentioned seventy-seven millions of the common stock?

A. Yes.

Q. I am speaking now of the carrying out of the reorganization in 1896.

A. Yes.

Mr. HOW: In this hearing before the Master, I am well aware that any objections that we make upon the ground of materiality are not potent, but I think I ought to enter an objection generally to this kind of testimony, on the ground that it is not material. I don't want any misunderstanding with regard to the position of the Complainant in this case. The Complainant in this case is not seeking a reasonable return upon their holdings of stock. What they do claim is that the corporation in which they hold stock is entitled to a reasonable return upon the value of its property. It makes no difference whether there is one hundred dollars worth of stock outstanding or one billion of dollars of stock outstanding, with regard to what the corporation is entitled to expect

from its services to the public. We are not seeking a specified dividend on stock, we are seeking a specified and proper return upon the value of the property. Now, it is wholly immaterial, in my view of the case, (and if I am wrong, I don't believe I have any case) it is wholly immaterial how much stock was ever issued, what it was issued for, or what is outstanding now, or what it was issued for. The value of the property is the basis upon which we are entitled to a return, and it doesn't make any difference to anybody, that I know of, excepting as between the corporation and its stockholders, whether the stock is all water, part water, all issued for par value, or issued for ten times its par value; it makes no difference.

The MASTER: Might it not have some bearing on the value of the property?

Mr. HOW: I can't see, myself, what bearing it has on the value of the property whether the stock is a billion dollars or a hundred dollars; the property is there, and that is what we seek a return upon. I don't want counsel for the other side to misunderstand or the Master to misunderstand. I am willing that they shall know all that there is to know about the Northern Pacific corporation, so far as the Complainant is concerned, and I am advised by the officers that they are willing that they should know all there is, but I submit and protest that it is not material, for the purposes of this case, as I say, whether there is one hundred dollars of stock outstanding or one billion, we are entitled to exactly the same return, and then it becomes merely a question as to what the different stockholders are entitled to as between themselves and the corporation.

Mr. O'BRIEN: In this very action, in passing upon the application for a temporary injunction, his Honor Judge Lochren, referred to the efforts made by everyone to obtain the construction of railroads, and, by inference, at least, referred to the original investments of the projectors of the road. In some of

the exhibits presented in connection with Mr. Gray's testimony are statements with reference to the dividends paid year by year, showing that in some of the earlier years no dividends were paid upon the stock; and in every case of this character which is tried the claim has been set up that in the earlier years of the enterprise no return, and often a positive loss, resulted, which it is claimed justify higher returns in the later years of the enterprise. And aside from its bearing upon the value of the property, and all other questions, the fact as to the actual amount of private funds invested in the enterprise is eminently material for the purpose of determining what is a fair return upon the value of the property actually owned.

Mr. How: If that can be figured out, it is logical and sound, and I admit that the testimony is material.

The MASTER: I believe you introduced evidence, in the first instance, as to the amount of stocks and bonds.

Mr. How: Under the rule in Smythe vs. Ames, the amount of stocks and bonds, and its market value, (what Wall Street thinks it is worth) is one of the elements to be considered by the Court in determining the value of the property, which is the base upon which we are entitled to a return. It is merely one of the elements. I, therefore, introduce testimony with regard to the amount of stock and bonds and its average market value over a period of years, five years, but only to comply with the rule laid down by Mr. Justice Harlan in the case of Smythe vs. Ames. Now, what that stock was issued for, it seems to me, does not cut any figure and cannot assist the Master in any way in determining what this property is now worth; and that is the base which the Master must make, but what Wall Street thinks its stock and bonds are worth, of course does assist the Master to some extent in determining what the property is worth. I say "what Wall Street thinks it is worth"—of course, I am not misunderstood in that: what the investing public thinks it is worth. But nobody cares what that stock was is-

sued for, or how it was issued. I don't want my position to be misunderstood merely because I sit and endure this cross-examination.

The MASTER: It doesn't seem to me so remote that it is proper for the Master to exclude cross-examination of this character.

Mr. HOW: Well, it doesn't to me. I don't expect the Master to exclude it.

The MASTER: The objection will be noted. Proceed with the testimony.

Q. How much of the preferred stock was delivered at the same time in connection with the same transaction?

A. $18,767,825 worth.

Q. And what bonds?

A. $7,755,000 of the new four-per-cent prior lien mortgage bonds, and $1,172,880 of the new three-per-cent general lien mortgage bonds.

Q. Sixty-six millions of the common stock so delivered was used in retiring the common stock of the Northern Pacific Railroad Company?

A. Common and preferred.

Q. And seventeen millions of preferred stock was issued for the purpose of retiring the preferred stock of the Northern Pacific Railroad Company?

A. Yes.

Q. Now, what was done with the remaining eleven millions of common stock?

A. There was sold to the syndicate $10,880,900, and there was returned to the treasury of the Company $2,500,000.

Q. Isn't there some error in those figures, Mr. Gray—sixty-six millions—

A. There is $66,619,100.

Q. Used in retirement of the old stock?

A. Used for conversions and assessments; $10,880,900 sold

to syndicate and $2,500,000 on hand in the treasury of the Company. That makes $80,000,000.

Q. Now, what consideration did the syndicate pay for that $10,000,000 of stock?

A. I am not able to segregate it. For the four classes of securities named they paid a consideration, or agreed to pay, of $19,873,830. I would like to strike out the words "agreed to pay," because they did pay.

Q. Have any of the bonds delivered to the syndicate as a part of that transaction been paid?

A. I don't understand the question.

Q. Have any of the bonds delivered to the syndicate as a part of that transaction been paid?

A. The prior lien bonds run for one hundred years, and the general lien bonds for one hundred and fifty years. You don't mean paid in order to be cancelled?

Q. Yes, sir; have any of them been paid?

A. I don't know.

Q. So far as you know, they have not been paid or retired or cancelled, have they?

A. I would think not.

Q. Has the interest been regularly maintained upon them?

A. I don't know as to those specific bonds. The interest is provided every quarter on the total amount of bonds outstanding, as shown by the books of the Company.

Q. You know there has been no default in the payment of interest?

A. I do.

Q. You know that those bonds are absolutely and perfectly secured?

A. I do.

Q. And are now actually worth par value, are they not?

A. No.

Q. Do you mean that they are not actually worth par, or

that they are quoted at less than par?

A. I mean to say that the three per cent bonds are not worth par value.

Q. You don't consider the three per cent bonds worth par value?

A. The market has said, and I think everyone that knows anything about it would say, that a bond bearing three per cent interest running one hundred and fifty years is not anywhere in this country worth par today.

Q. What do you consider those bonds worth?

A. You mean as a matter of personal opinion?

Q. Yes. You can give the market quotation, if you like; I don't care which you give.

A. I haven't looked at the market quotations recently, but from memory they are somewhere along about—

Mr. JOHNSON: 71¼, Mr. Gray, the last quotation.

WITNESS: (Looking at quotation in Pioneer Press.) It opens 71½, doesn't it? I would say about 71½.

Q. Now, there were how many of the three per cent bonds?

A. Turned over to the syndicate?

Q. Yes.

A. $1,172,880.

Q. And that at 71½ would amount to how much?

Mr. HOW: This is all to show what the syndicate would have made if they had held on to all those things and sold them today?

Mr. O'BRIEN: I am glad if you know what I intend to prove—I don't think you do; but if you desire to make any observations on it, you are entirely welcome.

A. It would amount to $838,609.20.

Q. Now, the other bonds which were issued, what were those?

A. The prior lien mortgage bonds?

Q. Yes.

A. They were quoted at about par.

Q. Those were four per cent bonds?

A. Four per cent bonds.

Q. How many of such bonds were delivered?

A. $7,775,000.

Q. There was paid to the stockholders, practically as an assessment, at the time of the exchange of the common and preferred stock, about $10,000,000, was there not, in cash?

A. Paid to the stockholders?

Q. No, to the syndicate.

A. You said to the stockholders.

Q. I thought I said to the syndicate by the stockholders, but we won't quarrel on that.

Mr. How: The syndicate.

Q. Fifteen dollars a share on the old common stock and ten dollars a share on the preferred stock amounted to how much?

Mr. How: That was not paid to the syndicate, Mr. Gray, was it?

WITNESS: I don't understand that it was. It was paid to the reorganization managers, to be used in carrying out the plan.

Mr. How: The syndicate and the reorganization committee were an entirely different thing.

Mr. O'BRIEN: I know they were, but you delivered all this stock to the syndicate, but agreed to return a gross sum of $19,000,000. Now, that is all you got, but the reorganization managers didn't get nineteen million dollars, and in addition there is the ten or fifteen dollars assessment on the stock.

Mr. How: I don't know.

Q. I think if you will turn back again to that agreement you gave us yesterday, Mr. Gray, you will see that the syndicate, in return for the seventy-seven millions of common and eighteen millions of preferred and the bonds, agreed to deliver nineteen million dollars, and that the reorganization committee acknowl-

edged the receipt of that money.

A. You are right about the money being paid to the syndicate.

Q. Now, will you give us the amount of that?

A. The total amount received by the syndicate?

Q. Yes, on account of those, what I call assessments on the old stock.

A. I haven't got their records.

Q. Assuming that the entire amount of old stock was surrendered and cancelled under that arrangement, what would it amount to?

A. $10,873,840.

Q. Now, Mr. Gray, is this a correct statement: Under the plan of reorganization in 1896, a syndicate was formed, its purpose being to finance and carry out the reorganization agreement?

A. Yes.

Q. That syndicate received $77,000,000 of the common stock?

A. $77,500,000.

Q. $77,500,000 of the common stock of the Northern Pacific Railway Company; $18,000,000 of the preferred stock of the Railway Company; the bonds you have described, the market value of which at the present time is $8,603,609.20, $10,873,840 in cash from the old stockholders, and in return delivered to the old stockholders sixty-six millions of the common stock so received, seventeen millions of the preferred stock so received, and delivered to the reorganization committee $19,873,830.

A. That is approximately a legitimate inference to draw from the records in the case.

Q. Has the remaining $2,500,000 of common stock been sold and issued?

A. Yes.

Q. For what price?

A. It was sold for an average price of 26.35 per cent.

Q. What was the remaining fifty-seven millions of preferred stock sold for?

A. It was used in the reorganization, given to various bondholders.

Q. It was exchanged for bonds issued by the Northern Pacific Railroad Company?

A. Yes, as I read it from the record yesterday.

Q. Now, will you please give the history of that at this time, with reference to the remaining fifty-seven millions of preferred stock, so that we will have the matter in regular sequence?

A. I can only give it to you in percentages. In order to give the details it would be necessary for me to go into the offices of J. P. Morgan & Co. and dig up their records, if they would allow me—which I doubt very much. I can give the percentages that were used on the different classes of bonds. In the case of the collateral trust notes, the holders received twenty per cent; the holders of general second mortgage bonds received fifty per cent.

Q. Before you give the whole list,—if you have finished with the first one, have you?

A. Yes, sir.

Q. What do you mean by the holders receiving twenty per cent?

A. Of the notes deposited by them they received twenty per cent in preferred stock trust certificates. Do you wish to know the other consideration they received?

Q. No. You don't mean that their notes were discounted, that they were paid less than the face of the notes?

A. No, for they received bonds and some cash.

Q. Oh, yes, but in the payment of the notes they received to the extent of twenty per cent of those notes bonds in lieu of cash?

A. Stock.

Q. Preferred stock in lieu of cash?

A. Yes.

Q. At what price was that stock taken?

A. I don't see how I could possibly make any equation of that, for the reason that there was 100 per cent in prior lien four per cent bonds. I would have to know what the reorganization managers figured, what they had in their mind as to the value of the prior lien bonds, in order to determine how much of the remainder of the value of the notes was applicable to this preferred stock that was paid, so that I don't see how I could possibly answer that question.

Q. Well, are you able to tell the gross par value of the bonds which were accepted in lieu of cash on the collateral notes?

A. No.

Q. Or in any of these instances?

A. Well, the only clue that I have as to that is that the syndicate managers in their agreement placed a value of sixty on the three per cent bonds. That would be on the basis of five per cent. Now, to put the same valuation on the four per cent bonds, it would be about eight per cent.

Q. You mean that would be placing a valuation on the preferred stock?

A. No, I am speaking of the bonds now.

Q. Well, I simply ask you if you knew the total amount of the preferred stock which was accepted in lieu of cash by the holders of the notes which you have described.

A. I didn't understand you to ask that. But I don't think I could answer that without access to the records of the reorganization managers. Pardon me a moment, perhaps I may be able to. There were deposited by the public $9,494,000 of collateral trust notes, on which, in accordance with the plan, they would receive $1,898,800 of preferred stock trust certificates.

Q. That is on the assumption that they were willing to accept the preferred stock at par?

A. Oh, no.

Q. You simply have taken twenty per cent of the amount of the indebtedness of that character and assumed that preferred stock was received to that amount?

A. Yes.

Q. And that is on the assumption that the stock was received at par, is it not?

A. No, they simply were to take that regardless of what the stock was worth. They were to receive, in cash, three per cent in May and four per cent on January 1, 1897, or seven per cent in all, in cash, one hundred per cent in prior lien four per cent bonds and twenty per cent in preferred stock trust certificates. Now, if these things had been received at par, there would have been 127 per cent received, which, of course, would have been an absurdity; so that there must have been an understanding on their part that some of the securities that they received were not worth par.

Q. The remainder of this stock was disposed of to the bondholders in this manner?

A. In varying proportions, yes.

Q. In varying proportions,—from twenty per cent to what per cent?

A. Fifty per cent in the case of the general second mortgage bonds, and fifty per cent in the case of the general third mortgage bonds; fifty per cent in the case of the preferred stock trust certificates, sixty-two and one-half per cent to the holders of the consolidated mortgage bonds.

Q. Now, each of those security holders received, at the same time, the obligation of the Northern Pacific Railway Company, in one form or another, for the total amount of his holdings, did he not?

A. Yes.

Q. And those obligations and securities so delivered are at the present time not in default?

A. No securities issued by the Northern Pacific Railway Company as of or since September 1, 1896, are in default.

Q. So that the preferred stock delivered to the security holders you have described was in the nature of a payment or consideration moving to them for their consent to the readjustment of the securities held by them?

A. That and in part payment of what was due them.

Q. But in no case was the debt actually scaled down, it was only postponed?

A. Yes, in the case of the consolidated mortgage bonds they only received sixty-six and one-half per cent in general mortgage three per cent bonds for their five per cent bonds.

Q. And what percentage did they receive in stock?

A. Sixty-two and one-half per cent in preferred stock trust certificates.

Q. Did they receive anything else?

A. One and one-half per cent in cash.

Q. So the aggregate payment to them was one hundred and twenty-six per cent?

A. They received, at par, one hundred thirty and one-half per cent.

Q. And that was the only case in which the new securities which were exchanged for the old securities were for less than the face value of the old securities together with accrued interest?

A. That is, so far as the securities of the Northern Pacific Railway Company are concerned; I cannot say, off-hand, as to the branch lines that had to be dealt with, but as to the securities of the Northern Pacific Railroad Company that were turned in, the consolidated mortgage bonds were the only ones that received bonds for less than their face value, for it was a three per cent bond for a five per cent bond.

Q. Now, this resulted in the issuance of the entire authorized preferred stock?

A. With the exception of $4,086,300.

Q. Was that subsequently sold and issued?

A. It was.

Q. For what price?

A. An average of about sixty-six per cent.

Q. Was that preferred stock retired?

A. The whole issue of seventy-five millions of the preferred stock was retired.

Q. When was that done?

A. January 1, 1902.

Q. At what price?

A. Par.

Q. On January 1, 1902, the Northern Pacific Railway Company retired the entire issue of seventy-five millions of preferred stock at par?

A. Yes.

Q. Has any new stock been issued since that date?

A. A like amount of common stock was issued shortly thereafter.

Q. In 1902?

Mr. HOW: As a part of the same transaction.

A. Well, that is a question of financial transaction, not necessarily by any action of the Company. Still, I have no objection to have it go in that way. The money was raised by a syndicate and certain obligations given to the syndicate which were liquidated with an issue of common stock. In that way it amounted to the same thing.

Q. In other words, a syndicate was formed which furnished the means to retire the preferred stock at par?

A. If I may be permitted, I will read into the record the statement made by the president to the stockholders at the following annual report. It is short.

Q. All right.

A. "Under the power reserved at the time of its issue, the

directors retired and paid off at par the preferred stock of the Company on January 1, 1902. To provide the necessary funds for this purpose convertible certificates of indebtedness were issued at par to the common stockholders pro rata according to their holdings. These certificates have since been retired through conversion into common stock of the Company, leaving but one class of stock outstanding at the present time."

Q. Then so far as the treasury of the Company is concerned, the transfer of the preferred stock into common stock had no effect?

A. That is so.

Q. Has any additional stock been issued since that time?

A. No stock has been issued, but a subscription has been arranged for, as stated in the last annual report to the stockholders, on which payments are being made quarterly. It was resolved at a meeting of the stockholders held in January, 1907, that of an increase in the authorized stock of ninety-five millions the right to take as and when provided nine hundred and thirty thousand shares to be offered for subscription at par in proportion to their respective holdings to all holders of this Company's now outstanding stock as recorded at the close of business on December 31, 1906. In accordance with the resolutions, subscriptions to this new issue of stock have been received and payments made in installments on the respective dates provided in the resolutions.

Q. Well, that will increase the amount to how much?

A. That adds ninety-three millions of stock, that will increase the total outstanding capital stock to 248 million dollars.

Q. And that has all been subscribed for at par?

A. Not all, but nearly all.

Q. Nearly all subscribed for at par, and payments are being made upon it?

A. Yes.

Q. When was the St. Paul & Duluth Company purchased?

A. In 1900.

Q. That was a purchase of all of the property, of every kind, of that Company, was it not?

A. That was a purchase of the outstanding stock. The land-grant lands of the St. Paul & Duluth Railroad Company were purchased by the Norwestern Improvement Company, and the Northern Pacific Railway Company purchased the outstanding stock, as far as it could be secured, nearly the whole of it, and issued bonds to raise the money to pay for it.

Q. What was the cost, if you can give it?

A. Of the whole?

Q. Of each, separately.

A. The land-grant and land-grant assets were purchased by the Northwestern Improvement Company for $4,020,927.39; and the money received by the St. Paul & Duluth Company that was used to retire the outstanding preferred capital stock and scrip of that Company, the money was placed in trust for that purpose. The right existed in the legal structure of the St. Paul & Duluth Railroad Company to retire the preferred stock in that way.

Q. You mean this money that was paid by the Northwestern Improvement Company?

A. The Northwestern Improvement Company bought the lands, and the money was used by the St. Paul & Duluth Railroad Company to retire its preferred stock.

Q. And what more consideration was there?

A. The railroad and all its property were purchased for a sum sufficient to retire all of the common capital stock and scrip outstanding at sixty per cent of its par value, and the money was placed in trust for that purpose.

Q. And that amounted to how much?

A. The cost of the St. Paul & Duluth Railroad and its equipment, as shown in the general balance-sheet of June 30, 1900,

amounted to $10,131,686.45.

Q. As you say, the bonds of the Northern Pacific Railway Company were issued to pay that?

A. Bonds of the Northern Pacific Railway Company were issued to pay for it, and the Railway Company also assumed certain St. Paul & Duluth Railroad mortgages outstanding.

Mr. HOW: In addition to the payment of this ten millions, they assumed the obligation of the St. Paul & Duluth Railroad Company for these bonds, is that it, Mr. Gray?

WITNESS: Yes.

Q. To what extent?

A. Of the St. Paul & Duluth Railroad first mortgage, one million dollars; of the St. Paul & Duluth second mortgage, two millions; of the St. Paul & Duluth first mortgage consolidated bonds, one million; of the Taylors Falls & Lake Superior Railroad bonds, guaranteed by the St. Paul & Duluth Railroad Company, $210,000; of the Duluth Short Line Railway bonds, guaranteed by the St. Paul & Duluth, $500,000; Stillwater & St. Paul Railroad bonds, guaranteed by the St. Paul & Duluth, $196,500; St. Paul & Duluth Railroad Company car trust notes, $344,596.76.

Q. Prior to the making of that purchase, had the Northern Pacific Railway Company ever had any interest in the stock of the St. Paul & Duluth Company?

A. The Northern Pacific Railway Company never had, to the best of my belief, but in trying to get information in regard to the stock of the old companies, of which you were asking me yesterday or day before yesterday, I find that some of the preferred stock of the Railroad Company seems to have been expended in some way in connection with the St. Paul & Duluth, but I have not followed it far enough to know just exactly what that covers.

Q. Well, was not the Northern Pacific Railroad Company at one time the owner of a large portion of the stock of the St.

Paul & Duluth Company?

A. I don't know that there was a large portion. I remember very well that the St. Paul & Duluth Railroad Company was controlled jointly by the Chicago, St. Paul, Minneapolis & Omaha (with which I was connected at the time), the St. Paul, Minneapolis & Manitoba (now the Great Northern), and by the Chicago, Milwaukee & St. Paul. When the Omaha road built its own line to the head of the lakes, it sold out its interest, the Manitoba road did the same and the Milwaukee road must have done the same, but I have no recollection of the Northern Pacific at that time having any interest in the St. Paul & Duluth.

Q. How much were the bonds which were issued by the Northern Pacific for the purpose of purchasing the St. Paul & Duluth road?

A. The amount of St. Paul & Duluth Division Bonds issued at the time of the purchase was $9,215,000.

Q. And this purchase was made with the proceeds of those bonds?

A. Yes.

Q. Is the corporation "The St. Paul & Duluth Railroad Company" still in existence?

A. Yes.

Q. But all of its properties have been transferred to the Northern Pacific Railway Company?

A. Yes.

Q. You have no means of knowing from whom the stock of the St. Paul & Duluth Railroad Company was purchased?

A. I do not know at this time.

Q. When was the Northwestern Improvement Company organized?

A. In 1897.

Q. That is a holding company, is it?

A. No.

Q. A real estate and improvement company?

A. When I was first advised in regard to that, it was described to me as an improvement company.

Q. Have conveyances been made to that company of all the remaining portions of the land-grant of the Northern Pacific Railroad Company?

A. No.

Q. What portions of the land-grant have been so conveyed?

A. Certain lands were sold to an outside party which were afterwards sold to the Northwestern Improvement Company.

Q. What proportion of the remaining lands contained within the land-grant was that?

A. I couldn't say now.

Q. And all of the land-grant of the St. Paul & Duluth road, which was still owned by that company in 1890, was transferred to the Northwestern Improvement Company?

A. The Northwestern Improvement Company purchased the lands.

Q. What is the amount of the capital stock of the Northwestern Improvement Company?

A. $2,775,000.

Q. That stock is all owned by the Northern Pacific Railway Company?

A. Yes, sir.

Q. Have any dividends ever been paid upon that stock?

A. Yes.

Q. Can you give the amounts of the total dividends paid by the Northern Pacific Railway Company, by years?

A. I would have to refer to the books.

Q. What consideration did the Northern Pacific Company give to the Northwestern Improvement Company for its capital stock?

A. There were certain properties not necessary to the operation of the road as such. I can't answer you any more specifically than that now, as the books and records of the Northwest-

ern Improvement Company are kept at Tacoma.

Q. As I understand it, the Northwestern Improvement Company is a subsidiary corporation, organized to facilitate the transaction of some of the business of the Northern Pacific Railway Company?

A. Of course that raises the question as to what is the business of the Northern Pacific Railway Company. One of the things that was explained to me in 1897, in New York, that I recollect very well, was to facilitate the irrigation of the arid lands in the West—and that has been done to some extent, a considerable extent.

Q. Well, also to facilitate, at least, some of the business of the Northern Pacific Railway Company, was it not?

A. The question is general and vague.

Q. Well, I would be very glad, then, if you will give us a definite and precise reason for the organization of the Northwestern Improvement Company.

Mr. How: If you know, Mr. Gray

A. I only know that certain properties were transferred to the Northwestern Improvement Company in consideration for its capital stock and some debenture bonds that it issued. The details of that are not in my memory, and, in so far as I know, could only be obtained in the office of that company in Tacoma.

Q. And the only explanation which you remember, that was given to you, was that it was for the purpose of facilitating irrigation?

A. That was in conversation with a gentleman not now connected with the Company, but who did have a good deal to do with it at that time.

In reply to the question as to the dividends received by the Northern Pacific Railway Company from the Improvement Company, in the fiscal year 1901, it received five and one-half per cent dividends, amounting to $152,625; in the fiscal year 1904 it received ten per cent, $277,500; in the year 1905 it re-

ceived ten per cent, or $277,500; in the year 1906 it received two and one-half per cent, or $69,375. That is a total of twenty-eight per cent received so far, amounting to $777,000.

Q. Was not one of the objects of the Northwestern Improvement Company, or one of the reasons for its creation, that it would enable the Northern Pacific Railway Company, at the time of reorganization, to place its lands in the name of the Northwestern Improvement Company and thus leave those lands free from the liens of the subsequent mortgages necessary to be placed to carry out the reorganization and thus enable the lands to be sold subject only to the old mortgage and without being subject to the new mortgage?

A. I do not think so.

Q. As a matter of fact, if all of those lands had been subject to all of the subsequent mortgages, it would have greatly hampered their sale and created an immense amount of confusion and trouble in making sales, would it not?

A. I do not understand why that should be so. The great bulk of the lands are held under the prior-lien mortgage, as provided in Article 7 of that mortgage, and releases are constantly being given from the mortgage as the lands are sold.

Mr. HOW: That is, the land-grant lands?

WITNESS: The land-grant lands I am speaking about.

Q. I always supposed that that was one of the reasons why it was very convenient to have the lands in the name of the Northwestern Improvement Company.

Mr. HOW: Well, I don't understand that any land-grant lands are in the name of the Northwestern Improvement Company.

WITNESS: Oh, yes, there are some.

Q. Are the affairs, properties, earnings, of the Northwestern Improvement Company and the Northern Pacific Railway Company kept entirely distinct and separate?

A. They are.

Q. In the testimony of Mr. Cooper it appeared that where property intended for railway purposes had been purchased by the Northwestern Improvement Company, and subsequently transferred to the Northern Pacific Railway Company, interest at six per cent per annum for the time the property was held by the Northwestern Improvement Company was added to the purchase price of the land.

A. That is probably so. Mr. Cooper's information should be accurate on that point.

Q. Do you know whether or not at those purchases the funds and cash of the Northern Pacific Railway Company were used, or the funds and cash of the Northwestern Improvement Company?

A. If I understand your question, if the Railway Company purchased lands from the Improvement Company, it paid for them in cash.

Q. Well, I mean at the time of the purchase by the Improvement Company of property intended to be transferred to the Railway Company.

A. I didn't know that there was any property that was intended to be transferred to the Railway Company at the time that was done. I think if anything of that kind was done it was done by mistake or oversight.

Q. It is simply a question, Mr. Gray, as to the propriety of the interest charge. The value of the coal lands held by the Northwestern Improvement Company and operated by that company are included in the property upon which the Complainants claim a right to earn a return in this case; and at the same time it appears that where property was purchased for the benefit of the Railway Company by the Northwestern Improvement Company interest was charged. Now, either one of two conditions is true, that it is a distinct company, or it is not a distinct company. If it is a distinct and independent company, the interest charge may be correct, but the including of the

value of the coal-fields cannot be correct, and I wanted to ascertain from you simply as to whether or not the companies were distinct and separate.

A. As an accounting proposition, the two companies are entirely distinct and separate.

Q. Now, is that carried out practically, so that when the Northwestern Improvement Company purchases a terminal which (for possibly perfectly good reasons) it is not desired to make public, is the cash of the Railway Company used for that purchase originally, or is it the money of the Improvement Company?

A. The Improvement Company buys the property with its own money and afterwards sells it to the Railway Company.

Q. And maintains all of its affairs distinctly?

A. Entirely distinct.

Q. And accounts to the Northern Pacific Company by dividends in the way that you have already described?

A. Yes.

Q. So that the separate identity of those companies, as a legal proposition, is actually maintained throughout their affairs?

A. That is perhaps a question for the lawyers. As an accounting proposition, they are kept absolutely distinct and separate.

Q. And are their funds and properties kept distinct?

A. Their funds, their banking accounts and their property are all kept distinct and separate.

Adjourned until tomorrow morning, June 26, at 10 o'clock.

On Friday morning, June 26, 1908, the hearing was resumed at the office of Mr. Gray, Comptroller of the Northern Pacific Railway Company.

CROSS-EXAMINATION (resumed).

By Mr. O'BRIEN:

Q. Mr. Gray, when was the issuance of the last sixty millions of capital stock of the Northern Pacific Railway Company determined upon?

A. Do you mean the ninety-three millions of which I testified yesterday, on which we are receiving subscriptions at the present time?

Q. Is the par value of that issue ninety-three millions?

A. Ninety-three millions.

Mr. HOW: Sixty per cent has been paid. Perhaps that is where you get the "sixty".

WITNESS: That is what you wish to know about?

Q. Yes.

A. A meeting of the stockholders, called for that purpose, was held on the 7th day of January, 1907, which resolved, first, that the capital stock of the corporation be increased by ninety-five millions of dollars; and under a further resolution, it was decided to issue 930,000 shares, or ninety-three millions, for subscription at par.

Q. The stock of the Company was rated upon the market at that time at how much?

A. The highest in January, 1907, was 189½, the lowest was 149.

Q. And at about what figure did the market value of the stock remain for some months following January 7, 1907?

A. The range for six months ending with June, 1907, was high 189½ (January 7th), and low 114¼ (March 25th).

Q. Can't you give it in months?

A. January, 1907, low 149, high 189½; February, low 144½, high 155¾; March, low 114¼, high 146¾; April, low 126½, high 139; May, low 120, high 137½; June, low 119⅞, high 130¼.

Q. What was the market quotation upon the stock on the 7th of January, 1907?

A. On January 7, 1907, the lowest prices for Northern Pacific common stock was 187½, and the highest price 189½.

Q. When did the market quotations for the stock first go lower than 187 after January 7, 1907?

A. On January 9th the low was 159 and the high 162½, but on that date the rights of subscription to new stock were quoted at "low, 20⅝ and high 23¾".

Q. That is, by the "rights" being quoted, you mean that the privilege to take the new stock at par was being sold upon the market at the figures you have given?

A. Yes, sir.

Q. What you mean is that, to obtain upon the market the right to purchase one share of new stock at its par value of $100 from the Company, one would be compelled to pay $20.62½?

A. Yes.

Q. Mr. Gray, was the issue of stock provided for by the resolution of January 7, 1907, all subscribed for?

A. Nearly.

Q. Within what time?

A. Before the first installment was due, which I think was February 1, 1907.

Q. Will you just describe how the stock so provided for by the resolution of January 7, 1907, was offered?

A. A circular was issued, reciting the resolutions of the board of directors recommending to the stockholders an increase of the Company's stock and also the resolutions recommended for adoption by the stockholders which, as I have stated, were adopted by the stockholders at the meeting January 7,

1907, and the circular recited the facts as to how the subscriptions were to be paid, and so on. For instance, it says, "Stock certificates for such new stock shall be issued only when and after full payment in cash at par shall have been made for the stock therein specified. For all sums paid, this Company will issue receipts. The record holders of such receipts shall not be entitled to vote or to receive any dividend declared in respect of stock, but the holder of every such receipt not in default shall be entitled to receive interest upon the payments therein stated, which interest shall be payable quarterly at the same rate per cent as the regular quarterly dividends (not including any extra dividend) which from time to time shall be declared and be paid, in respect of its present issue of capital stock, out of the Company's net revenues derived from its current transportation business."

Q. My question was, how was it offered and to whom.

A. It was offered to all stockholders of record of December 31, 1906.

Q. At what price?

A. At par.

Q. And in what proportion?

A. Five per cent was to be paid—

Q. No, those are payments. How much could any particular stockholder purchase?

A. Sixty per cent of his holdings.

Q. I don't understand what you mean by that.

A. I mean by that that there were 155 millions of stock outstanding, and 93 millions (which was exactly sixty per cent of that) was offered to the stockholders at par.

Q. That is, the stockholders were offered this stock pro rata?

A. Yes.

Q. A pro rata proportion of the stock at par?

A. Yes.

Q. Now, was all of this stock subscribed for under that of-

fer? In other words, was this entire issue accepted by the stockholders in those proportions?

A. There is a small amount, as the receipts would indicate, that has not been subscribed for, but substantially, almost the entire amount, was subscribed for.

Q. By the stockholders?

A. By the stockholders or in their names.

Q. By the stockholders or by those to whom they had assigned their rights?

A. Yes.

Q. And what amount actually has been so subscribed for?

A. 929,210 1/5 shares were subscribed for.

Mr. How: 930,000 was the entire issue, I understand, proposed?

WITNESS: Yes.

Q. And I understand that some payments have been made on account of those subscriptions?

A. Yes.

Q. How much has been actually paid, in cash, on account of those subscriptions?

A. The actual cash payments are rather in excess of the total amount of the subscriptions, for the reason that those stockholders who wished were permitted to pay up the full amount instead of paying by installments. It might be a little work to dig out just the actual payments on the basis of the installments, but I know that we have received money in excess of what would be required to satisfy the installments.

Q. Have you in mind the total payments which have been made?

A. I think it is shown in Complainant's Exhibit 16: Amount received from subscriptions to new capital stock to April 30, 1908, $60,539,634.99.

Q. What length of time was given the stockholders in which to exercise their right to purchase the stock?

A. The right to subscribe was to cease on January 15, 1907.

Q. And these subscriptions to which you have referred had all been received prior to January 15, 1907,—on or prior to that date?

A. I don't know. The great mass of them certainly had.

Q. Will you ascertain that fact?

A. If any were received subsequent to that date, it would be by the grace of J. P. Morgan & Co., and I don't believe I could ascertain that fact.

Q. Well, was there an intermediate agent of the syndicate in this transaction?

A. There was no syndicate, but J. P. Morgan & Co. are the standing fiscal agents of the Company.

Q. And the issue was made through that company?

A. Yes. That is, that company receives the subscriptions and issues receipts for them.

Q. That was the same company that managed the syndicate on the reorganization, was it not?

A. It was the company that was a party to the syndicate agreement and the reorganization managers of the Company.

Q. But the syndicate transactions were carried on through J. P. Morgan & Co.?

A. I don't think that is a fair way to state it. The Deutsche Bank was one of the parties to the syndicate, and they had a very decided way of managing their own affairs in their own way.

Q. Well, in the syndicate management is there not, and was there not, in the case of the reorganization of the Northern Pacific, one man or one firm, known as the syndicate managers?

A. The syndicate agreement recites, "J. P. Morgan & Co., of New York and the Deutsche Bank, of Berlin (hereinafter called the 'Syndicate Managers'), of the first part."

Q. So those two constituted the syndicate managers?

A. Yes.

Q. Is there any record in the office of the Northern Pacific Railway Company which shows the amount of bona fide subscriptions received from the stockholders of the Company for this new issue of stock under the resolution of January 7th?

A. If there is any record in the offices of the Company, I would have to assume that they were, every one of them, bona fide.

Q. That is not my question, Mr. Gray.

A. Well, then, I have no such information as you desire.

Q. Have you any information, or is there any record in the office of the Northern Pacific Railway Company, showing the individual subscriptions to this stock under the resolution of January 7th?

A. I do not know what there may be in the New York office, but I don't think there is any such record in St. Paul.

Q. And no such information has ever come to you?

A. I believe not.

Q. But you are the general Comptroller of the Company?

A. Yes, but I do not keep, and it is not usual for the accounting officer of a large corporation to keep, the stock ledgers.

Q. Where are the stock ledgers kept?

A. In New York.

Q. Is it not true that the only persons who know from whom subscriptions were actually received are the syndicate managers?

A. You mean the fiscal agents?

Q. Or the fiscal agents.

A. I don't know.

Q. But so far as any of the records of the Company with which you are familiar are concerned, you are unable to tell whether any individual stockholder subscribed for his pro rata share of the stock issued under the resolution of January 7th or not?

A. Oh, I may be able to tell as to one or two.

Mr. How: I did, as to one.

WITNESS: I know some others that did.

Q. Will you produce the circular addressed to the stockholders with reference to this stock?

Witness here produced circular which is as follows:

"NORTHERN PACIFIC RAILWAY COMPANY.

RESOLUTIONS OF BOARD OF DIRECTORS, DECEMBER 12, 1906, RECOMMENDING TO STOCKHOLDERS AN INCREASE OF THE COMPANY'S CAPITAL STOCK.

WHEREAS, For the construction, acquisition and equipment of this Company's railways now in course of construction or acquisition, and of extensions adequate for the fast-growing transportation needs of the great and rich territory served by the Northern Pacific system, additional capital will be required, for the raising of which the existing securities of the Company would not be available or sufficient; and

WHEREAS, The Board of Directors of the Northern Pacific Railway Company is of opinion that the raising of fresh capital can be accomplished most to the advantage both of the public and of the Company, by the creation of new stock, to be issued in conformity to the legal right of existing stockholders to take such new stock in proportion to their present respective holdings:

Resolved, That the Board of Directors hereby recommends and proposes to the stockholders of the Northern Pacific Railway Company an increase of ninety-five million dollars ($95,000,000) in the Company's capital stock, to consist of 950,000 shares of the par value of one hundred dollars ($100) each; so that after such increase shall have been made the capital stock shall be two hundred and fifty million dollars ($250,000,000) composed of two million five hundred thousand (2,500,000) shares of one hundred dollars ($100) each.

Resolved, That the President be, and hereby he is, requested and authorized to call a special meeting of the stockholders of this Company, to be convened in pursuance of the provisions of

this Company's charter, and of the laws of the State of Wisconsin and of the Company's by-laws, at the offices of the Company in the City of New York, at twelve o'clock noon, on the 7th day of January, 1907, for the purpose of taking action increasing the Company's stock to the amount aforesaid.

Resolved, That the Board of Directors recommends to the Company's Stockholders, when so convened, the adoption of the following resolutions:

RESOLUTIONS RECOMMENDED FOR ADOPTION BY STOCKHOLDERS.

WHEREAS, By the charter of this Company and by the General Statutes of the State of Wisconsin, the capital stock of this corporation may be increased by a vote of the owners of record of a majority of its outstanding stock, in person or by proxy, at any annual meeting or at any meeting called for that purpose; and

WHEREAS, The stockholders of this Company deem it necessary for the construction, acquisition and operation of this Company's railways now in course of construction or acquisition, or which may hereafter be constructed or acquired, as well without as within the State of Wisconsin, that the capital stock of this corporation be increased by ninety-five million dollars ($95,000,000) so that, after the making of such increase, the aggregate capital stock of the corporation shall be two hundred and fifty million dollars ($250,000,000);

Resolved, that the capital stock of this corporation be, and the same hereby is, increased by ninety-five million dollars ($95,000,000); such increase to consist of nine hundred and fifty thousand (950,000) additional shares, each of one hundred dollars ($100), so that, after the making of such increase, the capital stock of this corporation shall be two hundred and fifty million dollars ($250,000,000) consisting of two million five hundred thousand (2,500,000) shares each of one hundred dollars ($100).

Resolved, that of the said increase of stock, the right to take (as and when hereinafter provided) nine hundred and thirty thousand (930,000) shares be offered for subscription, at par,

in proportion to their respective holdings, to all holders of this Company's now outstanding stock, as recorded at the close of business on December 31, 1906; but such right to subscribe shall cease and determine on January 15, 1907, in the case of every such stockholder who shall not then have subscribed therefor, in manner as in these resolutions provided; and the rights of any and every stockholder who shall have failed fully to complete and perform such subscription in manner as herein provided, and within the time in these resolutions provided, or within such additional time as the Board of Directors or the Executive Committee of this Company, in its discretion, may grant for that purpose shall forthwith cease and determine. And any and all of the increase of stock now offered to and not taken by stockholders under such offer may be disposed of by the Board of Directors as it shall deem to be for the best interests of the Company.

Resolved, that the moneys payable to this Company upon all such subscriptions, shall be paid by the subscriber, or his assigns, at the offices of its Fiscal Agents, in the City of New York, at such times, and in such installments as are stated in the form of subscription appearing below.

Stock certificates for such new stock shall be issued only when and after full payment in cash at par shall have been made for the stock therein specified. For all sums paid, this Company will issue receipts. The record holders of such receipts shall not be entitled to vote, or to receive any dividend declared in respect of stock, but the holder of every such receipt not in default shall be entitled to receive interest upon the payments therein stated, which interest shall be payable quarterly at the same rate per cent as the regular quarterly dividends (not including any extra dividend), which from time to time shall be declared and be paid, in respect of its present issue of capital stock out of the Company's net revenues derived from its current transportation business.

Resolved, that subscriptions for such additional stock shall be made upon the form following, unless and except in so far as the same may be changed by the Board of Directors of the Executive Committee:

No.

NORTHERN PACIFIC RAILWAY COMPANY,

Subscription for Increased Capital Stock.
Amount Subscribed for Shares.

The undersigned, shareholder of record at the close of business upon December 31, 1906, of the Northern Pacific Railway Company, hereby subscribes for, and agrees to take, at par, all such additional shares and fractions of shares, forming part of 930,000 shares, of the new or increased stock of the said Railway Company now offered for subscription, as the undersigned may be entitled to subscribe for and to take (but not in excess of sixty per cent of the amount of the present stock held by the undersigned on December 31, 1906), when and as such new or increased stock shall be issued under and pursuant to resolutions of the Stockholders of the said Company at the special meeting to increase by 950,000 shares, each of $100 par value, the present capital stock of said Company as outstanding upon December 31, 1906; which special meeting has been called under notice dated December 12, 1906; and, as provided in such notice and such resolutions, the undersigned from time to time will make payment on this subscription at the office of the Fiscal Agents of the Northern Pacific Railway Company, Messrs. J. P. Morgan & Co., 23 Wall Street, New York City, in the several installments next hereinafter specified; and after the complete payment of all such installments and not before, the undersigned shall be entitled to receive capital stock and certificates for the capital stock, for which this subscription is made, and thereupon to receive and to enjoy the right of a stockholder in respect of the stock for which this subscription is made.

The moneys payable on this subscription shall be paid at the offices of the Fiscal Agents of the Northern Pacific Railway Company, Messrs. J. P. Morgan & Co., No. 23 Wall Street, New York City, in the following installments:

5	per cent	on or before	February 1, 1907.
7½	"	on	April 1, 1907.
12½	"	"	July 1, 1907.
12½	"	"	October 1, 1907.

12½	per cent	on	January 1, 1908.
12½	"	"	April 1, 1908.
12½	"	"	July 1, 1908.
12½	"	"	October 1, 1908.
12½	"	"	January 1, 1909.

This Subscription is made subject to the terms and conditions stated in the notice mentioned above, or which shall be contained in the resolutions of the Stockholders of said Railway Company that may be adopted by them at the special meeting of stockholders authorizing the increase of such stock, and shall become binding, and be in force, from and after the time when the said proposed increase of stock shall become effective, according to law, and to the charter of the said Railway Company.

In case of default by the Subscriber, or his assigns, in making any payment herein provided to be made, or in performance of any other of the terms or conditions hereof, all rights of the Subscriber, or his assigns shall, at the pleasure of the Northern Pacific Railway Company, cease and determine.

Dated, December 1906

Executed in the presence of

Resolved, that this Company's Board of Directors and Executive Committee shall respectively be empowered to make all necessary or desirable lawful orders and rules regarding the making and collecting of subscriptions for the said additional stock, and for the issuance of the same, and for the forfeiture of the rights of delinquent subscribers therefor.

(End of resolutions recommended for adoption by Stockholders.)

Resolved, that for the purpose of such stockholders' meeting, the stock transfer books of this Company shall be closed at the close of business on December 31, 1906, and reopened at the commencement of business on January 8, 1907."

Q. What was the resolution adopted at the meeting of January 7th with reference to the appointment of J. P. Morgan &

Company? Will you please read that resolution?

A. I have not the minutes of the meeting in full, I have only the resolutions that were shown in that circular and what is quoted here in the annual report. I don't know whether the full resolution is here or not.

Q. When you referred to the syndicate managers, a few moments ago, as J. P. Morgan & Co., and the Deutsche Bank of Berlin, to what syndicate were you referring?

A. The syndicate that was formed at the time of the reorganization of 1896.

Q. There was no syndicate with reference to the issuance of this new stock?

A. No.

Q. But the Certificates were delivered to the fiscal agents, J. P. Morgan & Co.?

A. No certificates have been delivered yet, probably have not been printed.

Q. No certificates of stock, but some certificates have been issued?

A. The fiscal agents issued receipts for the payments received by them, and at the end of the subscription those receipts will be surrendered and certificates of stock will be issued.

Q. The entire transaction was done through the firm J. P. Morgan & Co., fiscal agents?

A. Fiscal agents, yes.

Q. And the only record that the Northern Pacific Railway Company has of the matter is from the reports from J. P. Morgan & Co.?

A. That is all that I know of, and I believe that to be the fact.

Q. Will you produce the resolution or authority to J. P. Morgan & Co., appointing them fiscal agents?

Mr. How: I object to this as immaterial. I think I ought to; I cannot conceive what purpose counsel have in putting

this sort of thing into the record, it has nothing to do with any issue that the Master or the Court is called upon to determine, and I really think that this is a matter that is proper for the Master's ruling.

The MASTER: Under instruction I suppose he can refuse to answer, if you want to go to that extreme.

Mr. HOW: I don't. The fact is that there is nothing we care to conceal.

The MASTER: Otherwise, the objection will be noted and the witness can answer.

Mr. HOW: I do not want to be put in the position of having anybody suspect that I suspect that the Company has anything that it wants to conceal—I don't think it has—therefore, I do not desire to advise the witness to refuse to answer, but I do think that the matter is so foreign to the subject before the Master that it is proper for the Master's ruling.

Mr. O'BRIEN: I suggest that if Mr. How will reflect for a moment, he will agree with us that this is not immaterial. We are endeavoring to ascertain what is a fair remuneration to the stockholders of the Northern Pacific Railway Company for the public service which that Company has rendered. It developed yesterday that at the time of the reorganization some ten millions of dollars was contributed by the holders of the common and preferred stock of the Northern Pacific Railroad Company and at the same time that they received an equal amount of the stock of the Northern Pacific Railway Company. It now appears that in 1907 a new issue of stock was made, the stock rights in which sold upon the markets of this country for more than the amount contributed by the old stockholders in 1896, and that amount at least should be added to the dividends which had been earned to those men. The claim is that the state of Minnesota has fixed a rate for the public service so low that it is depriving the stockholders of their property without compensation, and we are endeavoring to show that the stock-

holders up to the present time, without any investment, when the size of the property is considered, have received immense and excessive profits.

Mr. DURMENT: This very thing shows that the stockholders who were stockholders at the reorganization of 1896 made a profit of thirteen dollars a share on their stock, just in these very certificates, or by their right to re-subscribe, or might have done so.

Mr. HOW: Counsel misapprehend—as they appear to have misapprehended from the beginning—what the object of the bill of complaint is in this suit. I have tried to relieve them of that misapprehension; I hope the Master will not rest under it, or not get under it at all. The stockholders are not complaining that they do not get dividends; they are not suing the Railway Company for that purpose, they are suing the Railway Company to compel it, if it can, and suing the State to compel it, to allow the corporation, if it must, if it is proper that it should, to obtain a fair return upon the value of the property of the Northern Pacific Railway Company devoted to public use. Now, it makes no difference to anybody what dividends the stockholders get. We say that corporation, under these laws complained of, will not get a fair return upon the value of its property devoted to the public use. I hope nobody will get away from that, because that is the object of this suit. We do not say a word about a dividend in our bill of complaint, nor increment to the stockholders, and if the stockholders started with a corporation worth one hundred millions of dollars in property and that property has increased so that it now is worth six hundred millions of dollars, the stockholders are entitled to a return, at least the corporation is entitled to a return, upon six hundred millions of dollars and a reasonable return; and they are entitled to issue stock representing that six hundred millions of dollars, and that stock is not watered, nobody is defrauding anybody; the value has come from the growth of

the country; and I want to protest against the idea that a railway corporation—the most hazardous of all enterprises, perhaps—is not entitled at least to the increment of increase in the value of its property through honest, straightforward, earnest, careful, conscientious business dealing for a generation. Now, that is all we insist upon and all we ask for. We ask for a fair and reasonable return upon the value of the property devoted to public use. If we have capitalized it at a hundred dollars, or capitalized it at a billion dollars, so far as its capital stock is concerned, it can cut no figure.

Mr. DURMENT: I want to say here that the misapprehension is not upon the part of defendants' counsel in this case. We apprehend very clearly and very well what the bill of complaint alleges and what the counsel's position is, but the trouble is that the counsel misapprehends the situation. He seems to think that there can be no possible view of the question but his own, and he seems to think in these matters that nothing can be of any materiality except the thing that goes to the particular allegations of his bill. Now, we submit that we have a right to go into this whole thing, and whether they pay dividends or not, we have a right to show up this whole thing. We have our views of this thing, and our theory of it we think is just as sound as his, and that these matters bear very materially, and if they used it as it appears to me here they did, as mere stock-jobbing matter, if they take from the Company what is worth on the market 189 cents and can be sold for that amount and pay a dollar for it, I say that is very material on the question of what is a reasonable return or whether they have had a return or not, as to whether the freight rates were reasonable or not; we have a right to consider the profits they made by stock-jobbing out of this particular deal as well as in every other way.

Mr. HOW: There is no such thing as stock-jobbing.

Mr. DURMENT: Well, a difference of opinion again, Mr.

How, that is all.

The MASTER: Well, I suppose that if a railroad by reason of its railroad operations, and by reason of the property devoted to public use, is making large accumulations from year to year, aside from paying liberal dividends from this property, it would indicate that their charges for service were excessive. They are entitled to a reasonable compensation, but if the stock goes up constantly and that is a direct result of the rates which they exact from the public it would indicate that those rates are higher than the public ought to pay; and the fact that the stock increases and if it can be shown that that increase is the direct result of their charges for their service, having reference to the property devoted to public use, it seems to me that testimony of that kind would have a bearing. I do not at least, think the time has come for the Master to exclude this line of testimony.

Mr. How: I agree to that. If it is true that this Company has been growing wealthy through excessive charges to the public, I agree that it ought to be stopped; but I do not agree that the increasing price of the stock in the market shows that. The corporation is entitled to a fair return upon the value of the property devoted to public use. I do not think anybody will question that. It is too late to question that until the United States Supreme Court knocks over that proposition. Now, if the corporation's property is worth 600 millions of dollars and is entitled to earn seven per cent upon that, and if it has 155 millions of stock and chooses only to declare a seven-per-cent dividend on that stock, that seven-per-cent dividend and its ability to lay aside a surplus are no indications whatsoever as to whether or not it has overcharged the public if its property is worth twice the par value of its stock. If it is entitled to earn seven per cent on six hundred millions because that is the value of its property, and chooses to declare a dividend only of seven per cent on 300 millions because that is

the amount of its stock, then I say it is not an indication of excessive charge that it puts aside to surplus a seven per cent on the other 300 millions, because it is not on the value of its stock that it is entitled to a return but on the value of its property. Supposing the corporation be over-capitalized, is worth 600 millions of dollars and is capitalized at a billion, it will be easily seen where we will come out, for it is claimed on the part of the corporation that it is entitled to pay a dividend of seven per cent upon its stock regardless of the value of the property devoted to public use. So I say that if it has property worth 600 millions devoted to the public service and is entitled to earn seven per cent upon it and declares dividends only on 155 millions of stock, it is entitled to hold the balance or entitled to divide the balance, and the amount of the dividends upon its capital stock is no indication whatsoever as to whether it is overcharging the public.

The MASTER: I cannot tell now whether it may be or not, but I am inclined to think, at this stage of the case, it is proper to receive this testimony, with a view of further testimony that may be received for the purpose of showing that it is material, even taking your view of the case, Mr. How.

Mr. HOW: Yes. The question is as to the resolution appointing J. P. Morgan & Co. the fiscal agents of the Company.

Mr. O'BRIEN: Oh, no, that is not the question.

Mr. HOW: I don't care. We are advised that there is nothing that this Company wants us to attempt to conceal. Now, I do not want to put myself in the position, and will not, of advising a witness not to answer a question, unless, of course it is worse than I think they will ask.

Mr. O'BRIEN: Of course, in the interests of the Complainant, Mr. How, whose attorney you are, you would not regard any request or advice you would receive from the Company, anyway, would you, even if they had advised you? You are not the attorney for the Company here.

Mr. HOW: I am attorney for the Complainant as a stockholder representing all other stockholders. That is really the true interest, is it not, Mr. O'Brien?

Mr. O'BRIEN: Do you think it would be material to show what interest Mr. Shepard had?

Mr. HOW: We are willing to show it.

Mr. O'BRIEN: Well, we will try that before we get through.

The MASTER: I am inclined to think I will allow it as cross-examination. I think I would allow it if I had a right to rule upon it absolutely.

A. The minutes containing the resolution are not in my possession.

Q. In whose possession are those minutes?

A. They are certainly in the possession of the secretary, in New York, but a copy may be in the possession of the assistant secretary, in St. Paul.

Q. Mr. Howard Relf?

A. Mr. R. H. Relf.

Q. Have any copies or extracts from those minutes been furnished to you?

A. I have received copies of extracts from minutes bearing on the accounts.

Q. Have you those?

A. I have.

Q. Will you produce them?

A. I have one of them here, for instance.

Q. Will you please read that letter into the record?

A. This is a letter from the assistant secretary, dated St. Paul, January 13, 1908: "Following is copy of resolution adopted at meeting of the Executive Committee held January 8, 1908.

'On motion it was resolved that Messrs. J. P. Morgan & Co., the fiscal agents of this Company, be and hereby are authorized to accept prepayment of any installment due on subscriptions

to the new stock up to and including the installment due October 1, 1908, allowing the party making prepayment a discount at the rate of four per cent per annum, computed from the date of prepayment to the due date of the installment prepaid.'"

Q. Are you able to state what the Northern Pacific Railway Company paid to J. P. Morgan & Co. for their services in this transaction?

A. One-quarter of one per cent on the total amount of the subscription.

Q. Can you tell how much of the 155 millions of stock of the Northern Pacific Railway Company was in the control of J. P. Morgan & Co. on January 1, 1907?

A. I cannot.

Q. Are there any records in the office which would show that?

A. There are not.

Q. Was that firm a stockholder upon the books of the Company at that time?

A. I don't know.

Q. Are there any records in the office of the Railway Company which will show that?

A. Not in St. Paul, I think.

Q. Where are those records?

A. In New York.

Q. In whose possession in New York?

A. If they are in the possession of the Company in New York, they are in the office of the secretary, Mr. Earl.

Q. Has any of the stock provided for by the resolution of January 7, 1907, been sold since the original subscription to which you have referred?

A. I am not sure that I exactly understand you, but I want to make a correction of what I said before: I find, by looking at the letter I had in my hand just now, that whereas I said that if any subscriptions were received subsequent to the date

named in the prospectus or whatever it was, it was done not by the grace of J. P. Morgan & Co., but by the grace of officers of the Company in New York.

Q. What letter do you refer to?

A. It is a letter that I received that has not been in evidence.

Q. Will you produce the letter?

Mr. How: You have not got the letter itself, Mr. Gray. It is not a letter to you.

Q. Will you produce the letter from which you have received this information?

Mr. How: Have you got any such letter? You are in error when you say it is a letter to you.

WITNESS: I didn't say a letter to me.

Mr. How: This is not a letter to you and I ask you not to produce it.

WITNESS: The letter to which I refer was not written to me, and by advice of counsel I decline to produce it.

Q. It is now in the hands of Mr. How,—

Mr. How: It is not.

Q. —counsel in this case, is it?

Mr. How: It is not.

Mr. O'BRIEN: Mr. How, won't you permit the witness to testify?

Mr. How: I don't want him to testify what is not the truth. There is, what purports to be a copy of a letter, from which he gets the information, in my hands.

Q. Is there a copy of this letter, or what purports to be a copy of this letter, now in the hands of Mr. How?

A. Yes.

Q. And from the reading of that copy, you desire to change your former statement?

A. Yes.

Q. And you had read that copy before you made this change in your testimony?

A. Yes.

Mr. O'BRIEN: I now call upon Mr. How to produce that particular paper.

Mr. HOW: Perhaps you think I care whether you have it or not. (Mr. How hands Mr. O'Brien the paper referred to.)

Q. I now show you the letter or copy of letter to which reference has been made, and ask you if that is the letter to which you referred.

A. This is the copy of letter to which I referred.

Q. It is the paper which you read?

A. Yes.

Q. Will you please read the paper to which you referred into the record?

A. This is a letter from George H. Earl, as Secretary, dated February 14, 1907, addressed to Howard Elliott, President of the Northern Pacific Railway Company, in St. Paul.

"Dear Sir: All subscriptions to the new stock not filed on January 15th have been passed upon by Mr. Hill and where authorized subscription receipts have been issued. In such cases the subscriber has been required to pay the interest accruing from February 1st to the date of payment of his installment, at the rate of seven per cent so as to place all subscribers on an equal footing as of February 1st.

"By a resolution adopted by the Executive Committee January 17th, Messrs. J. P. Morgan & Co. were authorized to accept prepayment of any installment due on subscriptions to the new stock up to and including the installment due October 1, 1907, allowing to the party making prepayment a discount at the rate of four per cent per annum computed from the date of prepayment to the due-date of the installment prepaid, provided that prepayment of any such installment shall be received only upon February 1st, April 1st or July 1st, 1907."

Q. Now, were any of the shares authorized by the new issue which I refer to as the issue made under the resolution of January 7, 1907, sold directly by the Company to any individual?

A. No.

Q. So that none of that stock has been sold except through this plan that you have described?

A. That is my belief.

Q. And there is no basis for determining the difference in the amount which the Company realized by a direct sale of stock to an outsider, or which it realized from the sale of stock to its stockholders through the system you have described? In other words, if there was any sale of stock by the Company directly upon the market from which the Company received the entire market value of the stock at the time of the sale, I want to know it.

A. I believe if there was any such sale I would necessarily know it and I know of none such.

Q. Now, Mr. Gray, I want to go back a little, to the reorganisation of 1896. Have you in your possession the contract between the reorganization committee and the syndicate to which reference has been made?

A. I have not the original contract.

Q. Have you a copy of it?

A. I have a printed copy of it.

Q. Will you produce it?

Witness produces paper reading as follows:

"A.—Syndicate Agreement.

MEMORANDUM OF AGREEMENT, Made this sixteenth day of March, 1896, by and between

J. P. MORGAN & Co., of New York, and the DEUTSCHE BANK of Berlin (hereinafter called the "Syndicate Managers"), of the first part; and

J. P. MORGAN & Co., as Reorganization Managers of the Northern Pacific Railroad Company (herein called the "Reorganization Managers"), of the second part; and

The SYNDICATE SUBSCRIBERS hereto (hereinafter called the "Syndicate"), constituting the party of the third part; every such Syndicate Subscriber being bound only ratably and to the

extent of his own subscription, and not for any other subscriber or subscription.

WHEREAS (pursuant to a Plan about to be issued), It is proposed to undertake a reorganization of the affairs of the Northern Pacific Railroad system on the basis of a Prior Lien Four per cent mortgage and a General Three per cent mortgage, involving about $6,500,000 annual fixed charges for all outstanding bonds (not including sinking-fund charges nor interest on bonds reserved for additional construction requirements, etc.), and with $75,000,000 Four per cent noncumulative preferred stock and $80,000,000 common stock, it being understood that new Prior Lien bonds equal at least to the par of any undisturbed existing main-line bonds are to be reserved for the ultimate redemption thereof;

And, Whereas, it is proposed that to the extent and in the manner hereinafter provided the Syndicate shall provide the cash requirements of said Plan:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That, in consideration of the mutual promises herein contained and the expected benefits from the performance thereof;

1. The Syndicate will take and pay for, and the Managers will sell and deliver, the following new securities when issued:

$7,775,000 of the new 4 per cent Prior Lien Mortgage Bonds.
1,172,880 of the new 3 per cent General Mortgage Bonds.
18,767,825 of the new Preferred Stock (Trustees' Certificates).
77,500,000 of the new Common Stock (Trustees' Certificates).

for the sum of $19,873,880 in cash, plus any interest accrued on the bonds when delivered.

2. The Syndicate, if so requested by the Reorganization Managers, will further take and pay for the following additional amounts of new securities when issued:

$3,554,960 of the new 4 per cent Prior Lien Mortgage Bonds
9,718,120 of the new 3 per cent General Mortgage Bonds

for the sum of $8,875,000 in cash, plus any interest accrued on the bonds when delivered;

Or, if and as requested by the Reorganization Managers, the Syndicate will so take and pay for any part of both or either of

such lots of bonds; the ratable price thereof to be fixed by the Syndicate Managers and the Reorganization Managers.

The Reorganization Managers agree to sell to the Syndicate said additional lots of bonds, if, and as the proceeds thereof shall be, required by said Managers for the purposes of the reorganization, or such part thereof as may be so required, as above provided.

3. If at any time, for purposes in their opinion calculated to promote the reorganization, the Reorganization Managers shall desire the Syndicate (a) to advance moneys upon the security of certificates approved by the Syndicate Managers entitling their holders to new securities when issued, or (b) to advance moneys upon other security approved by such Syndicate Managers (including coupons, lands or land notes), or (c) to purchase lands or land notes, the Syndicate, upon notice given by the Reorganization Managers to the Syndicate Managers, will make such loans at six per cent per annum interest, and will make such purchases up to an aggregate amount of loans and purchases not exceeding $15,000,000; but such loans upon lands or land notes or such purchases thereof shall not exceed $3,500,000 in amount. All loans hereunder shall be repaid out of the proceeds of the new securities deliverable hereunder.

4. It is distinctly understood and agreed, anything herein to the contrary notwithstanding, that the total obligations of the Syndicate under this agreement shall not exceed the sum of forty-five million dollars ($45,000,000) in cash.

5. Deliveries of new securities shall be made with reasonable promptness after completion of reorganization, in New York, London and Berlin, in such proportions as the Syndicate Managers respectively shall request. The Syndicate will perform all its undertakings hereunder from time to time on the call of the Syndicate Managers. The compensation of six and two-thirds per cent hereinafter provided for is to be paid when and as securities are delivered, and regardless of the aggregate amount of securities delivered.

6. Not over $9,000,000 (20 per cent) in money shall be called from the Syndicate hereunder in any one month. Payments from the Syndicate Subscribers shall be due only after ten days'

written notice from the Syndicate Managers to the Syndicate Subscribers.

7. The Syndicate hereby authorizes the Reorganization Managers, in and by the proposed plan, to offer, for account of the Syndicate, to depositing holders of the preferred stock of the Northern Pacific Company, at $10 per share, preferred stock of the new Company to the amount of 176,192 shares and common stock of the new Company to the amount of 176,192 shares, and to offer to the depositing holders of the common stock of the Northern Pacific Company, at $15 per share, common stock of the new Company to the amount of 490,000 shares, upon the terms and in the manner provided in said plan and agreement, and the Reorganization Managers hereby agree to make such offer. All moneys paid by the depositing holders of preferred or common stock of the Northern Pacific Railroad Company under said plan and agreement shall be credited on account of the amount payable by the Syndicate under Article 1 hereof, and may be used by the Reorganization Managers for any purpose of the reorganization.

8. The Reorganization Managers shall pay to the Syndicate Managers for the benefit of the several Syndicate Subscribers in proportion to their respective subscriptions, a commission or compensation of six and two-thirds per cent in cash on the amount of the subscriptions hereunder regardless of the amount which the Syndicate shall be called upon to pay or advance.

9. The Plan of reorganization may be modified from time to time by the Reorganization Managers, and thereupon this agreement shall apply to such modified plan; but any amendment which the Syndicate Managers shall deem seriously to impair the value of the new securities shall have their joint written approval. The Reorganization Managers may finally abandon the Plan, including all modifications thereof, and in such event this agreement shall cease to be of any future effect, and no compensation thereunder shall be due the Syndicate.

10. The Reorganization Managers shall have and from time to time may exercise all powers as stated in the reorganization agreement and plan, including the right, in their discretion, to fix, limit or extend the time within which any bondholder may deposit bonds, or any stockholder may purchase stock, and to

waive any forfeiture in respect thereof.

11. Failure of any Syndicate Subscriber to perform any of his undertakings hereunder shall not release any other Syndicate Subscriber, except with the written consent of the Syndicate Managers. The Syndicate Managers may accept new Syndicate Subscribers from time to time in place of any Subscriber released by them, or who shall fail to perform his undertakings hereunder.

12. The Syndicate Managers, in behalf of the Syndicate, may make any and all arrangements necessary or expedient to carry out the purposes of this agreement substantially as herein set forth; or to promote or protect what they deem to be the best interests of the Syndicate.

13. The Syndicate Managers may decide whether the bonds and stock, or either, deliverable hereunder (except such stock as shall have been sold to depositing stockholders of the old Company) shall or shall not for a period not exceeding one year after delivery be held subject to the Syndicate Managers' control, i. e., "syndicated", for the purpose of sale by them for the ratable benefit of Syndicate Subscribers; and the Syndicate Managers may take all proper steps and adopt all reasonable precautions to carry such decision into effect. In case the bonds and stock be so "syndicated", the Syndicate Managers may sell the same, or any part thereof, for the benefit of the Syndicate, charging a commission of one per cent on the proceeds thereof, in addition to all expenses by them incurred, and they may require each Syndicate Subscriber to supply his ratable share of the bonds or stock so sold (which each Syndicate Subscriber, for himself, agrees to do), receiving his ratable share of net proceeds of such sales.

14. The Syndicate Managers shall not be liable under any of the provisions of this agreement, or any matter connected therewith, and in like manner the Reorganization Managers shall not be liable under any of the provisions of this agreement or any matter connected therewith, except in each instance for good faith and the exercise of reasonable diligence. The Syndicate Managers may become Syndicate Subscribers hereto, and in that event they shall be liable for their Syndicate subscriptions in the same way as, and ratably with, other Syn-

dicate Subscribers.

15. All notices to American members of the Syndicate shall be sufficient if signed by or for J. P. Morgan & Co. for the Syndicate Managers, and to other members if signed by or for the Deutsche Bank in like manner.

16. Each and every party hereto, upon reasonable request, will, from time to time, execute, deliver and perform all further written agreements necessary or proper to carry this agreement into effect.

17. This agreement shall bind and benefit not only all the parties hereto, but their respective executors, administrators, survivors, successors and assigns.

The respective Syndicate Subscribers, on signing this agreement, shall set opposite their respective names the amount of their respective subscriptions on account of the whole Syndicate obligation hereunder; and each Subscriber shall be liable only for such ratable part of the whole obligation of the Syndicate as shall bear the same ratio to such whole obligation as the amount of his subscription bears to $45,000,000.

Nothing herein contained, or otherwise, shall constitute the Syndicate Subscribers partners, or render them liable to contribute more than such ratable amounts as aforesaid.

IN WITNESS WHEREOF, The parties hereto, being the Syndicate Managers, the Reorganization Managers and the Syndicate Subscribers have at various dates affixed their subscriptions hereto, it being understood that, for convenience, this agreement may be signed in several parts and copies with like force and effect as if all of the signatures were put to one part or copy thereof."

Q. Have you a copy of the report made by the syndicate to the reorganization committee?

A. No.

Q. Did you ever see a report of that sort?

A. No.

Q. Will you produce the report made to the stockholders in June, 1897?

A. I will furnish it later.

Q. Will you please take each of the mortgages or other class of indebtedness, which existed at the time of the reorganization, against the Northern Pacific Railroad Company, and explain, separately, exactly what cash and securities were given, under the plan of reorganization, in lieu of those old obligations? There was, first, the first mortgage bonds.

A. The first mortgage bonds were not retired by the reorganization, they were retired a few years subsequent to it.

Q. There had been a mortgage executed at the time of the reorganization in 1875?

A. The date of the mortgage was 1881.

Q. And at the time of the reorganization, what was the total amount of bonds outstanding under that mortgage?

A. The list of bonds given in the plan of reorganization is dated January 1, 1896. Will that be acceptable?

Q. Oh, yes.

A. It shows that the bonds issued by the Northern Pacific Railroad Company held by the public January 1, 1896, (general first mortgage) were $41,879,000.

Q. That mortgage was assumed by the Northern Pacific Railway Company, the new company?

A. Yes.

Q. And those bonds were not retired as a part of the reorganization plan?

A. Only to this extent, that the reorganization managers offered, as shown in the plan, for a limited time, $1,350 of new prior lien bonds for each $1,000 of the six per cent first mortgage bonds, and a considerable amount was retired in that way, but it was optional entirely with the holders of the bonds as to whether they would take that. These bonds had not defaulted in interest.

Q. Can you give us the amount of bonds of the first mortgage which were retired in that way?

A. I would have to pick it out for you. The entire issue

was retired within a few years.

Q. Either by payment or by substitution?

A. By payment or substitution, yes.

Q. If you could give us that information, Mr. Gray,—how many of those bonds were retired by the substitution of prior lien bonds—I would appreciate it.

Mr. DURMENT: Let the statement show not only the amount of bonds retired, but also the bonds issued in lieu thereof.

Q. Then there was a mortgage dated November 20, 1883, known as the general second mortgage. What amount was due under that mortgage?

A. $19,216,000.

Q. Were those bonds retired?

A. They were.

Q. And what was given in their place?

A. Four per cent in cash, 118½ per cent in prior lien four per cent bonds and fifty per cent in preferred stock trust certificates.

Q. When you speak of four per cent in cash, a certain per cent in stock and a certain per cent in prior lien bonds, you mean a percentage of the total amount of indebtedness under that mortgage?

A. Yes.

Q. Then there was a third mortgage, dated December 1, 1887?

A. Yes.

Q. And what was the indebtedness under that mortgage?

A. $11,426,000.

Q. And how was it retired?

A. The general third mortgage bondholders received three per cent in cash, 118½ per cent in general mortgage three per cent bonds, and fifty per cent in preferred stock trust certificates.

Q. The fourth mortgage was one dated December 2, 1889, was it not?

A. The consolidated mortgage.

Q. Known as the consolidated mortgage?

A. Yes, sir.

Q. And what was the indebtedness secured by that mortgage?

A. $45,520,000. The consolidated mortgage bonds outstanding held by the public on the first of January, 1896, were $45,520,000.

Q. Where were the remaining bonds making up the total of $62,443,000 which I find as the amount of the bonds issued under the consolidated mortgage as stated in the Master's deed, at the time of the reorganization?

A. There were, under Receivers' certificates, $4,726,000; under collateral trust certificates, $6,850,000; with the Farmers Loan & Trust Company, account of Northwestern Equipment Trust, $2,000,000; with the Farmers Loan & Trust Company, account preferred stockholders, $3,347,000; in the Company's treasury, $165,000; and there was a small item of Railway Company's interest in a bond held by the Farmers Loan & Trust Company of $460.

Q. Were those bonds, to the amount of $62,443,000, which had been issued under the consolidated mortgage, retired as a part of the reorganization?

A. I find it stated that the amount used in the reorganization was $58,499,000.

Q. And what was used and given to retire those bonds?

A. One and one-half per cent in cash; sixty-six and one-half per cent in general mortgage three per cent bonds, and sixty-two and one-half per cent in preferred stock trust certificates.

Q. Were there, at the time of the reorganization, any other liabilities?

A. There were.

Q. Of the Northern Pacific Railroad Company?

A. There were some Northwestern Equipment Company notes out, which were paid in cash; there were some collateral trust notes, which were paid three per cent in cash in May—

Q. Please give the amount of the collateral trust notes.

A. The collateral trust notes deposited by the public amounted to $9,494,000, which were paid—three per cent in cash in May and four per cent in cash in January, 100 per cent in prior lien four per cent bonds, and twenty per cent in preferred stock trust certificates.

Q. What was the total issue of the collateral notes?

A. On June 30, 1896, the total amount issued was $9,494,000.

Q. Was it all in the hands of the public?

A. All in the hands of the public.

Q. Was there any other indebtedness?

A. There was the unpaid dividend certificates. Those that held dividend certificates received three per cent in cash, 118 per cent in general mortgage three per cent bonds, and fifty per cent in preferred stock trust certificates.

Q. The amount of those dividend certificates, I think, was given by you in Exhibit 18, was it not?

A. That was the total amount issued.

Q. Dividend certificates to the amount of $4,640,821.20, issued in 1882?

A. That was the amount issued, yes.

Q. And did those certificates bear interest?

A. Yes.

Q. What was the total aggregate value of those certificates at the time of this reorganization?

A. The amount outstanding at the time of the reorganization was only $500,316.90.

Q. How much of that was for the face of the certificates, and how much for interest?

A. Well, that was the face of the certificates deposited by the public.

Q. Was the interest added to that in the settlement?

A. In the settlement the payments that were made were calculated so as to cover whatever interest there might be on them.

Q. Was there any other indebtedness?

A. I believe I have covered all the indebtedness of the Northern Pacific Railroad Company.

Q. In classes?

A. Yes.

Q. Subsequent to or at the time of the reorganization, was there paid on account of other dividend certificates besides those which you have described as being in the hands of the public, any cash or bonds or stock?

A. There were some exchanged for consols, but I would have to look up the particulars of that. That was all prior to the reorganization.

Q. You have several times referred to securities or stocks in the hands of the public. Will you just explain what you mean by that?

A. Well, the public would represent all individuals, firms or corporations outside of the Company itself.

The MASTER: Then this property was in the hands of the Company, or in its treasury, as you might say, or else in the hands of the public outside?

WITNESS: That is the point.

Q. You were to examine the records to ascertain whether any cash had been paid the Company on account of preferred stock between the years 1875 and 1893; did you remember to do that, Mr. Gray?

A. I have had an examination made of the ledgers, and I will state what I have been able to get out of them. Of the fifty-one millions of preferred stock that were authorized under

the plan of reorganization of 1875, $42,816,394.90 were issued in retirement of the bonds that had been issued, with interest on the same as provided by the plan.

The MASTER: Is that the 7.30's that you have been talking about?

WITNESS: Yes.

Q. What was the amount of that bond issue?

A. The bond issue, as shown elsewhere in the ledger, was $31,755,700 of bonds, with $1,670 of scrip.

Mr. DURMENT: Those are the bonds on which you said the Company realized between twenty-eight and twenty-nine millions in cash?

WITNESS: I stated that from memory. In addition to the first mortgage bonds and scrip issued, there were land-warrant bonds to the amount of $765,600, land-warrant bonds and scrip to the amount of $14,886.47, and bills payable to the amount of $694,264.22; making an aggregate of bonds and notes of $33,232,120.69; to which should be added $1,726,573.53. The cash received from those transactions was $28,945,772.47. Those were the figures that I had in mind when I said between twenty-eight and twenty-nine millions. In addition to the $42,816,000 of preferred stock which I have stated, there was issued, for other purposes, $9,254,310.10. Part of this was used in the payment of outstanding accounts; part of it was used in payments which I have not the details of at present so that I could explain fully how those payments were applied. I find, for instance, that there were old claims, secured by collateral paid to the amount of $40,600, legal expenses, $8,000; old claims litigated, $24,000; general expenses paid, $26,000; land department expenses, $59,400; I find a payment on account of St. Paul & Pacific Railroad (which at one time the old Northern Pacific Railroad had control of but had to let go) which formed the nucleus of what is now the Great Northern Company, there was a payment of $350,000 on account of that; there was a pay-

ment for the Missouri Division construction fund of $2,050,000; and of the Pend d'Oreille Division construction fund of $1,665,000; there was a payment to W. K. Mendenhall (I don't know who he was) of $975; there was a payment for St. Paul & Duluth Railroad, but I am not able to give any more information, of $300,000. That was what you referred to yesterday, I presume; I have no further knowledge on that at present. There was paid for old six per cent stock (a matter that I think has not gone into the record heretofore) of $3,000; there was a syndicate which received $1,783,635.10, but I don't know what that syndicate was for, or what it did. In my testimony in regard to the Northern Pacific, Fergus & Black Hills Railroad I testified, or left it, that nothing but consolidated bonds had been paid for the securities of that company, but I find that $500,000 of the preferred stock was paid in addition. I find a payment to H. M. Rice, who I think was a director, (I suppose for services) of $1,000; and to C. Tower of $700; then there was sold to H. Villard and the Oregon & Transcontinental Company, $2,400,000 of the stock for $1,924,549.95 of cash. Now, that is all the information that I have been able to dig out, so far, in regard to the preferred stock.

Q. In reading these items, where you have said "there was paid to Henry M. Rice," for instance, you mean there was paid that amount of par value of preferred stock?

A. That is what I mean, yes.

Q. And the consideration for that issue of stock is a matter of conjecture, you say?

A. Yes.

Q. And you have given all the information you have upon that subject now?

A. All that I have been able to find, so far. I would wish to make a statement as to certain information, if I may—

Q. Any statement you desire to make, Mr. Gray, I would be delighted to have put in the record.

A. As a result of investigations, not in the books of account but in such record books as we have been able to have access to: This is a statement as to the stock issued by the Northern Pacific Railroad Company prior to the reorganization of 1875. To enable the Company to comply with the charter requirements that actual construction of the road be commenced before July 2nd, 1868, and that fifty miles be completed within one year thereafter, and pending authorization by Congress of the issue of a first mortgage, the directors of the Company authorized the issue of capital stock bearing interest at 6 per cent per annum, and the stock issued thereunder was, after Congress authorized the issue of bonds, redeemed, as shown by the account books of the Company, and while these books of account do not contain any entries with reference to the ordinary share of capital of the Company, I have nevertheless determined, from other sources, that this stock was issued for at least four purposes:

First: To pay the promoters for their services and expenditures in connection with the procurement of the charter, explorations, reconnoissances, preliminary surveys, etc.

Second: Stock sold with the first mortgage bonds: The prospectus of 1871 covering the issue of the first four million pounds sterling of the 7.3 per cent first mortgage gold bonds offered to the public, a $1,000 bond with $150 worth of stock for $880. Subsequently, and as the money market fluctuated (which it did in a very violent manner at that time), a $1,000 bond and as much as $400 of stock were offered at the same price (of $880) and it is probable that even better terms were offered the public than this.

Third: Jay Cooke & Co., as fiscal agents, agreed to raise a vast sum of money to carry out the enterprise of building a railroad into what was then an undeveloped country and for their services in part agreed to accept stock. This firm did in fact raise large sums of money through sales of bonds, and, as

is a matter of common knowledge, failed in the great panic of 1873.

Fourth: Stock was also issued in connection with contracts for construction of the road.

I am unable to find any record which discloses how much stock was issued for each of these purposes, nor am I able to find out why the obligations of the Company in this respect were not shown in its books.

I believe that a great deal of the bookkeeping was done by Jay Cooke & Company, and probably there was a good deal of carelessness. They were expecting to receive a statement and write up the books some time, and at the same time there may have been, and probably were, books kept, but I have not been able to get possession of them.

Recess until 2 p. m.

AFTERNOON SESSION.

Q. Mr. Gray, will you please give the interest which each of the old Securities of the Northern Pacific Railroad Company bore, and the rate of interest which the new and substituted securities of the Northern Pacific Railway Company bore?

A. The general first mortgage bonds of the Railroad Company were six per cent; the general second mortgage, six per cent; the general third mortgage, six per cent; the consolidated mortgage, five per cent; the Missouri Division mortgage, six per cent; the Pend d'Oreille division, six per cent; the dividend certificates, six per cent; the collateral first notes, six per cent; the bonds issued by the Railway Company, the prior lien bonds, were four per cent; and the general mortgage bonds, three per cent; the St. Paul & Duluth division bonds, four per cent. Those are the bonds issued by the Railway Company.

Q. But it was the first two that were used for the purpose of retiring the old bonds?

A. Yes.

Q. In your direct testimony you spoke of the Spokane, Portland & Seattle Railway Company which is in course of construction.

A. Yes.

Q. And the total cost of construction I think you said would be something in the neighborhood of forty-seven millions?

A. Yes, to April 30th. It is still under construction.

Q. One-half of which you said has been or will be paid by the Northern Pacific Railway Company?

A. Yes.

Q. Is the Spokane, Portland & Seattle Railway Company an independent corporation?

A. Absolutely so.

Q. Organized under the laws of what state?

A. Washington, I believe.

Q. And what is the amount of its capital stock?

A. I would answer as to that question that up to the date at which we are testifying the capital stock was only five millions.

Q. How much of that was owned by the Northern Pacific Railway Company?

A. One-half.

Q. Has the Northern Pacific Railway Company paid anything to the Spokane, Portland & Seattle Railroad Company for that stock?

A. The Northern Pacific Railway Company has furnished several times the amount of the stock to that Company, to be used in the construction of its road.

Q. You mean furnished it in cash?

A. Yes.

Q. From the treasury of the Company?

A. Yes.

Q. Have any bonds been issued by the Spokane, Portland & Seattle Railroad Company?

A. Not yet, that I know of.

Q. Well then, is the condition that the Northern Pacific Railway Company and the Great Northern Railway Company are furnishing the cash necessary to construct the Spokane, Portland & Seattle railroad?

A. Yes.

Q. From time to time as the money is required?

A. Yes.

Q. And hold, in equal proportions, all of the capital stock of the Spokane, Portland & Seattle Company?

A. Yes.

Q. You say up to the present time no bonds have been issued by the Spokane, Portland & Seattle Company?

A. I say in so far as I know. And to make that complete, the Northern Pacific Railway Company has not yet received any bonds on account of its advances.

Q. The indebtedness of the Spokane, Portland & Seattle Railroad Company, then, at this time, consists of the sums advanced to it or on its account by the Northern Pacific Railway Company and the Great Northern Railway Company?

A. With its open accounts for labor and material and things of that kind.

Q. Can you tell, without too much trouble, the total amount now due to the Northern Pacific Railway Company from the Spokane, Portland & Seattle Company?

A. The actual amount of cash advanced towards the construction of the Spokane, Portland & Seattle railroad to April 30th by the Northern Pacific is $29,438,636.49.

Q. Does the Northern Pacific Railway Company hold obligations of the Spokane, Portland & Seattle Railroad Company, of any kind, for that amount?

A. Outside of the capital stock?

Q. Outside of the capital stock.

A. No.

Q. You do not mean to be understood, Mr. Gray, as saying that this amount has been paid for capital stock?

A. No.

Q. Or any portion of it?

A. I mean to say that the Northern Pacific has advanced this money as called for; their books show that.

Q. It has been carried upon your books as an obligation of the other railroad company, has it not?

A. Of the other railroad company, yes.

Q. No credit has been given to the Spokane, Portland & Seattle Railroad Company for any capital stock delivered?

A. No.

Q. And when do you contemplate the issuance of bonds by the Spokane, Portland & Seattle Company?

A. I don't know.

Q. You don't know when you contemplate it?

A. It is not a matter that I have anything to do with.

Q. You do not contemplate it?

A. Personally, no.

Q. Was there at the time that these advancements commenced to be made, or at any other time, any written contract between the Northern Pacific Railway Company, the Great Northern Railway Company, the Spokane, Portland & Seattle Railroad Company, or any two of those three roads, with reference to the advancements to be made by the Northern Pacific Railway Company?

A. I don't know absolutely.

Q. Have you any such contract in your possession?

A. I think not.

Q. If there was such a contract, in whose possession would it be?

A. The secretary of the Company.

Q. In New York or in St. Paul?

A. In Tacoma.

Q. And the secretary at Tacoma is—

A. M. P. Martin. In order that there may be no misunderstanding, Mr. Martin is not secretary of the Northern Pacific, he is secretary of the Spokane, Portland & Seattle Company.

Q. Was the property of the Spokane, Portland & Seattle Railroad Company, included in the total valuation of the property of the Northern Pacific Railway Company, represented in this case by Exhibit 2?

A. I don't know.

Q. Was it included by you in Exhibit 13?

A. No.

Mr. How: Exhibit 2 excludes the Spokane, Portland & Seattle Company.

Q. Does the Northern Pacific Railway Company operate certain lines in Manitoba?

A. No.

Q. Does it own any lines in Manitoba?

A. Yes.

Q. Are those lines in operation?

A. Yes.

Q. By whom?

A. By the Canadian-Northern Railway Company.

Q. Under a lease from the Northern Pacific Railway Company?

A. The lease from the Northern Pacific Railway Company is to the provincial government.

Q. The Company operating those lines is a separate and independent corporation from the Northern Pacific Railway Company?

A. Entirely so.

Q. And those lines are operated under a lease from the Northern Pacific Railway Company to the government?

A. To the provincial government of Manitoba.

Q. To the provincial government, and then under a lease or

contract between the provincial government and the Company actually operated?

A. I don't know, of course, what arrangements they have, only the fact that the Canadian-Northern does operate the property.

Q. What is the annual rental received by the Northern Pacific Railway Company upon those lines?

A. $210,000.

Q. Have you at hand a copy of the lease?

A. I presume there is one in the office of the assistant-Secretary.

Q. Is the rental fixed at a certain percentage on the valuation of the property?

A. There is an option for sale and a rental on a sliding scale.

Q. By "sliding scale", what do you mean?

A. It was so much for the first ten years, I think, and then increasing.

Q The option for sale is at what price?

A. Seven million dollars.

Q. And for the first years of the lease the rental is what per cent?

A. Three per cent.

Q. And for subsequent years?

A. For the first ten years, the rental is $210,000 per annum; for the second ten years, $225,000 per annum; for the third ten years, $275,000 per annum; and thereafter, at the rate of $300,000 per annum.

Q. The St. Paul Union Depot Company is a corporation, is it not?

A. Yes.

Q. Organized under the laws of Minnesota?

A. Yes.

Q. Entirely separate and distinct from the Northern Pacific Railway Company?

A. Yes.

Q. The Northern Pacific Railway Company owns how much of the stock of the St. Paul Union Depot Company?

A. A one-ninth interest.

Q. What is the capital stock of the St. Paul Union Depot Company?

A. The authorized capital is one million dollars. The issued capital is $932,400.

Q. Of which the Northern Pacific Railway Company owns one-ninth?

A. Yes.

Q. Did the Northern Pacific Railway Company pay any consideration for that stock?

A. It did.

Q. In what way?

A. My belief is in actual cash, but I would want to look that up.

Q. Is that stock a dividend-bearing stock?

A. Yes.

Q. Have dividends been paid upon it for several years last past?

A. Yes.

Q. At about what rate?

A. Four per cent.

Q. Does each railway company which uses the union Depot in St. Paul pay a rental to the Union Depot Company?

A. Yes.

Q. Can you give us the actual amount of cash invested in the stock of that Company by the Northern Pacific Railway Company?

A. $103,600.

Q. Now, will you describe the Duluth Union Depot Company, Mr. Gray? You can probably give all this information concisely with regard to that.

A. The Duluth Union Depot Company was originally formed by the Northern Pacific Railroad Company and the St. Paul & Duluth Railroad Company. By the acquisition of the stock of the St. Paul & Duluth Railroad Company, the Northern Pacific became entire owner of the stock of the Duluth Union Depot Company. The Duluth Union Depot Company has a capital stock of $300,000, and first mortgage bonds of $300,000 and bills payable of $23,227.49.

Q. It is an independent corporation?

A. Yes.

Q. And have dividends been paid upon its stock?

A. Yes.

Q. At what rate?

A. Five per cent.

Q. And the Northern Pacific Railway Company owns all the stock of that company?

A. Yes.

Q. Other companies using it pay a rental?

A. Yes.

Q. And the Northern Pacific Railway Company also pays a rental for its use of the depot grounds?

A. Yes.

Q. The Minnesota Transfer Railway Company is an independent corporation?

A. Yes.

Q. Having capital stock?

A. Yes.

Q. The interest of the Northern Pacific in that company is represented by its ownership of one-tenth of the capital stock?

A. That is right.

Q. The total capital stock of the Transfer Company is how much?

A. $300,000 authorized.

Q. The railway companies using that transfer, including

the Northern Pacific Railway Company, pay a rental or switching charges, or in some other manner?

A. Yes, they pay the expenses of the Transfer Company including its interest, on the basis of the tonnage handled.

Q. Well, they pay certain charges to the company according to their use of it?

A. Yes.

Q. And are dividends paid upon that stock of the Transfer Company?

A. No.

Q. It never has paid a dividend?

A. No.

Q. Can you tell me the amount of the investment of the Northern Pacific Railway Company in the stock of the Transfer Company in dollars and cents?

A. $7,000.

Q. Does that represent the total amount invested by the Northern Pacific Railway Company in the Minnesota Transfer Company?

A. No. The Northern Pacific has purchased bonds of the Transfer Company, from time to time.

Q. To what amount?

A. The Northern Pacific Railway Company does not hold any of those bonds; it has sold them from time to time.

Q. So that $7,000 represents its entire investment in the Minnesota Transfer Company?

A. Yes.

Q. Are any such bonds held by the Northwestern Improvement Company?

A. I believe there are.

Q. To what amount?

A. I don't know.

Q. Mr. Gray, you were to give the exact amount of the outstanding bonds of the first mortgage made by the Northern

Pacific Railroad Company.

A. The general first mortgage bonds that were outstanding at the time of the reorganization was $41,541,000. There were acquired by exchange for prior lien bonds, $32,717,000, and called for the sinking fund, $8,824,000 retiring the issue.

Q. What was the market value of the stock of the Northern Pacific Railway Company on the 30th day of April, 1908?

A. It ranged from 131¼ to 132⅝.

Q. I call your attention to Exhibit 13. The items of that exhibit are taken from the books of the Company, as I understand it?

A. From the books and records of the Company.

Q. And represent the actual expenditures?

A. Yes.

Q. On account of the items mentioned there?

A. Yes.

Q. With the exception of the first item, "Property acquired under decree of foreclosure September 29, 1873, $65,610,825.92," that, you say, was the gross amount that you found charged to construction on the books prior to the reorganization of 1875?

A. Not exactly the gross amount; that is the amount at which the property stands on the books as the result of the foreclosure proceedings.

Q. Of 1875?

A. Of 1875.

Q. If you will turn again to the substitution of the bonds of the Northern Pacific Railway Company for the bonds issued under the consolidated mortgage—I will ask you first, whether any of the bonds secured by the consolidated mortgage had been used for the purpose of retiring the bonds of any subsidiary or other corporation?

A. They were issued in exchange for such bonds. Do you mean under the reorganization?

Q. No, prior to the receivership proceedings of 1893. Those

bonds had been issued, as I understand it, to acquire the bonds and stocks of the other railway companies making up the fifty-four companies?

A. Yes.

Q. Well, in each instance where the consolidated bonds were issued to take up the bonds and stocks of the subsidiary company, what became of the bonds so taken up or retired?

A. They were put up as muniments of title with the Mercantile Trust Company.

Q. None of them were ever re-issued?

A. Never.

Q. In 1896, at the time of the reorganisation, forty-five millions of the bonds issued under the consolidated mortgage were in the hands of the public?

A. Yes.

Q. There were some of those bonds in the hands of an equipment company?

A. There were two millions in the hand of the Farmers Loan & Trust Company on account of the Northwestern Equipment trust.

Q. Will you describe what that was and why those bonds were deposited in that way?

A. I am not able just now. Of course, it would be as collateral for the protection of the Equipment Trust Company. There was an equipment trust and there was an amount owing for the equipment; and these bonds were put up as additional security collateral to it.

Mr. How: Additional to the equipment itself?

WITNESS: Yes.

Q. Were there notes given known as equipment notes?

A. Yes, equipment trust notes.

Q. Those notes were paid at the time of the reorganization, in the manner you described this morning?

A. Yes.

Q. Can you give us the amount of those equipment notes and what was paid for them?

A. They were purchased at par, flat, as of June 1, 1896, with interest from that date to whatever time they were actually retired. The amount outstanding was three million dollars.

Q. They were paid in cash?

A. Paid in cash.

Q. That released two millions of this amount of the bonds of the consolidated mortgage?

A. Yes.

Q. Now, what became of those bonds?

A. Those specific bonds, I don't know that I could say what became of them. They were used in the reorganization. I have a record of the condition of things at the time of the reorganization. For instance, as was stated before, there were $62,443,000 of the bonds outstanding; in the reorganization there were used only $58,499,000, and just where the difference came in, what became of the balance of those bonds, I am not able to say offhand. As I stated this morning, there were a number under the collateral trust.

Q. In retiring all of the old bonds and all of the old indebtedness at the time of the reorganization, as you described this morning, was interest included in the total amount due in all cases?

A. I believe it was the aim of the reorganization committees or management to so arrange the exchanges that the holders of the bonds that had defaulted would not feel that they had really lost anything. In some cases they got cash, and while it would not appear that there was enough cash paid to cover the interest that had been defaulted, or anything nearly like it, yet there evidently was some sort of a computation made that would give them a fair security, or securities, in return for their old securities, and take care of both principal and interest

on some equitable basis.

Q. What I wanted to know was whether the amounts of the old indebtedness which you gave this morning was the face—

A. It was the face of the bonds, yes.

Q. —of the bonds in each case, or whether that included interest.

A. No, it was the face of the bonds. The consols, probably all of them, which were not used in the reorganization are still held by the reorganization managers.

Q. By "consols" you mean the bonds under the consolidated mortgage?

A. I mean the consolidated mortgage bonds themselves, yes, sir.

Q. And what do you mean by "used in the reorganization"?

A. Used in the sense of issuing new securities in place of them.

Q. That mortgage was satisfied and cancelled as a result of the reorganization, was it not?

A. I believe so.

Q. The only use that could be made of the bonds was their being retired and cancelled?

A. They were on hand and they were simply held by J. P. Morgan & Co., either as reorganization managers or as fiscal agents, for the Company. Perhaps a lawyer could explain for what purpose, but I could not.

Q. Has any interest been paid on account of them?

A. No.

Q. And you know of no reason why they should be in existence?

A. I know of no reason why they should not be cancelled.

Mr. How: Do you know whether they have been cancelled?

WITNESS: I do not.

Mr. How: They may not be cancelled, for all you know, as I understand it?

WITNESS: I don't know absolutely.

Q. According to your records, how many are still in the hands of the reorganization committee?

A. $8,850,000. And that, I may say, is not an account-book record. That is, there is no ledger account in existence to-day which shows those bonds as outstanding or shows them as an asset of the Company.

Q. The entire bonds issued under the consolidated mortgage amounted to sixty-two millions of dollars, in round numbers?

A. Yes.

Q. Forty-five millions were outstanding, in the hands of the public?

A. Yes.

Q. Seventeen millions were deposited as collateral security for various obligations?

A. Yes, between sixteen and seventeen millions.

Q. The forty-five millions which were in the hands of the public, were retired by the substitution and payments described by you this morning?

A. Yes.

Q. Now, were there any securities, stocks or other property, or cash, given by the Northern Pacific Railway Company on account of the sixteen or seventeen millions which you say had been deposited as collateral security?

A. I am not able to say. My belief is that there was an exchange of stocks up to $58,499,000, that my record shows were used for reorganization, but the details of the reorganization are not in my hands.

Q. Of course, if the debts for which these bonds were up as collateral were paid, the bonds themselves should have been cancelled and returned, should they not, without any further payment?

A. That is for a lawyer to say.

Q. And you don't know whether that was done or not, you

are not able to give us that information?

A. No, I am not.

Q. The charges, rentals and payments which the Northern Pacific Railway Company makes to the union depots, both in St. Paul and Duluth, to the Minnesota Transfer Company and to other similar corporations, are carried into Operating Expenses upon the books of the Company, are they not?

A. Of course, what represents the expenses of the depot companies is so carried. I might remark, in passing that there has been somewhat of a change during the past year in regard to the particular of rentals, under the orders of the Interstate Commerce Commission.

Q. I am not speaking of the rental of any particular track, but if you pay a certain amount for the privilege of using the Union depot and its tracks, for instance, that is included in the Operating Expenses of the Company, is it not?

A. Yes, it was so included prior to July 1st, last.

Q. And that is true with regard to the payments to the Union Depot at Duluth?

A. Yes.

Q. And the Minnesota Transfer Company?

A. Yes.

Mr. DURMENT: Mr. Gray, we would like that you prepare a statement showing just what became of these between sixteen and seventeen millions of consolidated bonds or consols which you testified about this morning, that were put up as collateral security for various matters except the $165,000 that was in the hands of the Company, and what securities, in the way of stocks or bonds, or other evidences of debt, were issued in place of them, and to whom they were issued and what became of them.

WITNESS: I will get up a statement based on all the information in my possession.

Adjourned until 10 A. M. July 14, 1908.

The next hearing before the Master occurred at Room 306 Federal building, on July 14, 1908, at 2 P. M., Messrs. Jared How and Robert Thorne being present on behalf of Complainants in Shepard vs. Northern Pacific Railway Company et al., and in Kennedy et al vs. Great Northern Railway Company et al., and Messrs. Thomas D. O'Brien and E. S. Durment on behalf of Defendants.

Mr. How stated that, on account of the absence of witnesses, there would be a possibility, at the latter end of this month, he would be unable to proceed with the introduction of testimony in the Northern Pacific case and suggested that, during the interim, testimony be taken in some other case, in order to expedite the hearing of the several cases assigned to the Master.

Counsel for the State objected to such course, urging that, on account of the numerous tabulations of figures, the length of time covered, the abstruse calculations necessary relating to questions of rates, etc., the entire force of the state being at present engaged in investigation of the Northern Pacific case, to inject testimony pertaining to another case at this stage of the proceedings would result in great confusion and difficulty.

The MASTER: I regret counsel are not able to come to some arrangement among themselves whereby they can be mutually convenienced in the matter of the taking of this testimony. Here are nine cases, all of which have a good deal of similarity; and, as has been stated a number of times two, or, at most, three of the cases will probably determine the questions in all the cases. All of these nine cases have been referred to the Master at one time under one limitation, and there are a large number of witnesses, a large number of counsel, and all are to be convenienced as far as practicable. It has occurred to me that the ground-work of all these cases, perhaps, is the valua-

tion of the property; and then the next question is what revenue should that property produce in order to be a proper compensation to the persons interested in the roads.

I realize that the State is inconvenienced a good deal, and has not the same facilities that these companies have in reaching conclusions, getting at the facts, testing the evidence as produced and going through these statistics which are so familiar to the clerical forces of the railroad companies; and that is a matter to be taken into consideration with reference to the course which should be pursued here. It occurs to me, however, that the cases can perhaps be divided up somewhat, so that while it would be incumbent upon the Complainants to pursue one branch of their case, say the question of valuations, until their evidence on that point has all been submitted in each case, and then, for the convenience of counsel, and, more especially for the convenience of witnesses, it would be proper to take up another case and follow that along in the same way until we have completed that subject and all testimony to be offered on that subject; and while I want to see counsel convenienced as far as possible—and I think the State should have every opportunity to follow the testimony which has been submitted here and to produce all the testimony that they can find upon the questions at issue,—yet it would occur to me that that could be done by the course which I have suggested; for instance, take up the question of valuations, if you please, and let us complete that. We have been at work now eleven days on that subject, taking testimony on the part of the Complainant in this one case. Let that testimony be completed (as I understand they are ready to do), put in all the testimony they say they have on that subject, then allow the State to cross-examine the witnesses thoroughly, and later upon further investigation, inasmuch as the State is peculiarly situated, the way is open for further cross-examination on the same subject, if they desire, because I think they ought to have every opportunity to

examine the testimony; but meantime, it seems to me we could take up another case and go along the same line in that case, get that into the same condition that this first case is in, with the same understanding in regard to the testimony in that case.

Of course it is desirable, as far as practicable, that all of the testimony upon a particular subject, including the cross-examination, should be submitted before we leave the case; but, at the same time, I think it is fair to the State to have an opportunity to go back, even though the Complainants may be precluded (except for good cause shown), from going back over the ground, to recall witnesses for further cross-examination upon some particular subject, if they desire, as to which they have subsequently acquired information.

That is the course that I would suggest here, and if that is agreeable, why not let the hearings take that course, unless you gentlemen can agree among yourselves to a better one or one that is more convenient to you? Of course, as we proceed, there may be further modifications; but here, for instance, we can complete the testimony on this subject and if the Complainant is not prepared, because of the absence of witnesses or for other reasons, to go on with the testimony in this case, it seems to me we ought to be able to take up some other case along the same lines and go on with that.

Mr. O'Brien: There is no question about the necessity of our accommodating each other in these cases, but it is an impossibility, in my judgment, for any one to defend these cases properly, jumping from one case to another; I certainly say I cannot do it, and if the Master says we have got to do it, I say the result will be that I cannot defend these cases properly.

The Master: I think, gentlemen, I will leave it that way. What we ought to do is to take this testimony as rapidly as possible. Here are nine cases, and in each case counsel for Complainants have a right to three months in which to put in

their testimony, which would make twenty-seven months which might be consumed in putting in testimony. We must accommodate each other; the State will want to be accommodated and counsel for the Complainants will want to be accommodated; but the point is to get along with all of these cases as rapidly as possible. It is very patent that a great deal of the testimony that has been received has been general, and I have no doubt that the same general character of testimony will be offered in other cases; now, I think if counsel for Complainant comes to a point where he is unable to produce further testimony, if ample notice is given, we might take up some other case.

I think I will leave it that way, gentlemen, that if the testimony is not concluded, when it comes to a point where counsel cannot proceed further in this case, upon ample notice of what case it will be, similar testimony in some other case, to be named by them may be introduced.

Mr. O'BRIEN: Will your Honor note our exception?

The MASTER: We will go on Thursday morning, July 16th, at 10 o'clock, and it will be understood that Mr. How will be given opportunity to get through with Mr. Cooper on that date.

(Adjourned.)

At the Federal building, on July 16, 1908, the hearing was resumed at 10 o'clock, A. M.

THOMAS COOPER,

recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. Mr. Cooper, at one of the former sessions you were asked to examine and let us know whether the properties in the St. Paul terminals as shown on Defts. Ex. C. were carried into the St. Paul terminals as shown on the schedule in Exhibit

9 at the same values as they are in Exhibit C. Are you prepared to answer that question now?

A. Yes, sir; they were.

Mr. O'BRIEN: We desire to return the original papers that were given to us by the Complainants, together with a printed copy of them, all bound in one volume.

Mr. HOW: I acknowledge receipt, with gratitude for their highly improved condition.

Q. You were requested to separate or detail the item of $25,362,383.41 a total valuation shown in the second column of Exhibit 9, and to do it in such way as to show what part of that sum is for the St. Paul & Duluth Railroad, and what part of it is for the remaining original part of the system, that is, the original Northern Pacific; have you done so?

A. I have prepared such a statement, showing how much of that property included in the valuation of twenty-five million dollars odd is the St. Paul & Duluth property; and by taking that and deducting it from the other figures, that gives the other answer. This statement I now hand you shows that the valuation of the St. Paul & Duluth property included in the $25,362,383.41 item aggregates $6,903,128.50.

Q. May we have that and have it marked?

Mr. HOW: I will say I have in my office duplicate copies which I will bring in this noon.

Marked for identification "Defendants' Exhibit L—Cooper."

Q. I call your attention to Complainant's Exhibit 10—Cooper. Calling your attention to the first item on that, "Line changes between Glyndon and Wadena, Minnesota," at which the average cost per acre of the property there referred to is $268.12, what is meant by the term "line changes" as used in that exhibit?

A. We are changing the location of our line between the two points, Wadena and Glyndon, moving it, straightening it out, reducing the curvature and the grade, and the general

term that is used in railroad work for that kind of work is "line changes"—changes of the line, changes of the alignment.

Q. Why were those changes made?

A. To straighten out the line and to reduce the grades and curvatures.

Q. It was made with special reference to the interstate traffic of the road, was it not?

A. It was made with special reference to all of the traffic of the road, because of the advantage of the results from the doing of the work, the results of course, to any kind of traffic that goes over the line.

Q. As a matter of fact, however, the lines as constructed were practical and ample in their then condition to reasonably serve that part of Minnesota, so far as traffic entirely within the state was concerned, were they not?

A. If we had had no business beyond Moorhead, which is the state line, we probably would not have made these line changes, because the volume of business would not have been sufficient to warrant the expenditure. In order to justify the large expenditure, we had to have a certain volume of business. That volume of business we had, we had grown to it, therefore, in order to secure economy of operation we made these changes.

Q. But that volume of business, the larger portion of it, consisted of interstate business, did it not?

A. I could not say as to that. I have never made an analysis of the business that crosses that particular piece of our line.

Q. How much of the old line will be abandoned when this line-changing is completed?

A. I could not answer that.

Q. Is it not true that there will be about eighteen miles of it between Winnipeg Junction and Glyndon of the old line that will be abandoned when these line-changes are made?

A. I do not know.

Q. You have said that this land has an average value, for

farming purposes, in your opinion, of $50 an acre, and yet it cost the railroad $268.12 an acre for what it acquired. Was there any peculiar condition or circumstance as to this particular section of your right-of-way which justified or induced the owners of the property to demand such a high price for it?

A. Not that I know of.

Q. Is it not a fact that these line-changes which were made by you in many instances made another cut, a railroad cut or division, by the construction of the road, of a farm that had already been cut in two by the railroad crossing?

A. Yes; but the first cut by the railroad was made before the farm was there, so that there was no severance damage. He went there with the Northern Pacific already constructed. This is the first severance damage that the Northern Pacific is responsible for.

Q. But still, the result was that when you got through with these line-changes he had a farm through which two rights-of-way of the same railroad ran, did he not?

A. There were some cases of that kind; not all of them, by any means.

Q. Now, is it not also true that upon the old line, as it was before you began to make these line-changes, all the farms through which the line ran, as well as the surrounding country, had easy access to the stations and to the road because their station grounds and roads were built upon the level, practically, of the surrounding country, and that these changes in many cases were run at a great height above the farms, over trestles, so as to make access to the railroad much less convenient?

A. I am not sufficiently familiar with that line in detail to answer that intelligently and to my own satisfaction. I know that one side-track has been elevated, to-wit, at Stockwood; I can't recall that any other has.

Q. Referring now to the purchases of property in St. Paul known or spoken of as the Commercial street property, what

was the reason for purchasing that property rather than seeking to condemn it?

A. Why, we always try to buy property before we condemn. In fact, I think the law contemplates that we shall try to settle with the owner amicably before we resort to condemnation. Therefore, whenever we want to buy property, either at Commercial street in St. Paul or any other place, we try to purchase it, if we can, at a reasonable price, condemnation being our last resort.

Q. Is it not true that a large part of that property was purchased (or the use to which it was contemplated it should be put when you started out to purchase it) for purposes other than railroad purposes?

A. It is not true.

Q. Was not one of the main purposes in purchasing a large part of that property to furnish to large shippers, or others, grounds which you might lease to them for storage or warehouses?

A. I never heard of that suggestion until you mentioned it now.

Q. Why did you buy it?

A. We contemplated (and probably would have started before this time, had it not been for the financial depression), the construction of a passenger-coach yard at that point. We now have to take all our passenger equipment, when it is unloaded, down at the union depot and buck it up the hill to Mississippi street, up a very heavy grade—a very expensive operation—and that has to be repeated again when the train is brought down to the station to take its load; and we purchased this particular property to use in connection with what we already owned there, and make quite an extensive passenger terminal out of it, into which we would take all our passenger equipment, clean it, and do everything else necessary; also have our round-house there instead of at Mississippi street, thus

eliminating a very expensive method of operation that we now have, under which we have to take everything from the river level up the hill to Mississippi street. And that plan has not been abandoned by any means, we expect to go at it—probably will go at it very soon, to carry out that plan.

Q. I have been told (so as to explain my question here) that one of the purposes for the making of these purchases of land was that you might lease to the Standard Oil and some other large concerns whose names were not given me, warehouses and properties near to your line so that you might have the benefit of their traffic in that way. Was there any such purpose in the purchase of these lands?

A. None at all. The explanation of that is this: That the Standard Oil is now upon a part of the ground that we have not yet purchased; also the Pintsch Gas Company. Now, we contemplate trying to make a trade with them, providing them ground elsewhere to get them out of this particular ground that we need. That may have been what you heard and got it confused.

The MASTER: That is what you have before referred to in your testimony?

WITNESS: Yes, sir.

Q. Well, the other man may have got it confused; he gave it to me exactly as I have stated it. Now, Mr. Cooper, referring again to Exhibit 9, it appears from your testimony heretofore given, that some portions of the properties carried into the valuations here are not as yet being used for railroad purposes, they have been acquired with reference to future needs. I will ask you, some time in the course of the day, (or if you can't do it today at your early convenience) to make a list of such of the properties as are included in the valuations given in Exhibit 9 as are not yet in use for railroad purposes and with your values for those properties. I will want it in such shape that by the use of that list and this Exhibit 9 I can com-

pute, by addition and subtraction, the values of the properties now actually in use for railroad purposes which you have included in this Exhibit 9.

A. To prepare such a list is an enormous job, because you are talking now of the entire Northern Pacific system, and I should say that it means at least two or three weeks' work of two men to make up such a list. I had some experience of the same kind in the Spokane rate case, and I prepared in that case a statement for Commissioner Prouty, showing that information not with reference to the entire right of way, but to a group of terminals which I specified separately in Exhibit 9. That list I have here with me. It is a year old; that is to say, it is dated April 9, 1907, and was approximately correct at that time. There have been very little changes since, nothing that would substantially affect it, and I should be glad if that would answer the purpose and save the expense and time of making up another one.

Mr. HOW: It probably would; the rest is mere right-of-way and is of merely negligible value.

Mr. DURMENT: So far as this is concerned, we are willing, if the Complainant in the action is willing, to take it as a showing of that date. Of course, if you want to figure any small changes that have been made, do so. Of course, as you say, this does not give the values, and we of course would like the other information that was attached to it.

WITNESS: No, that has no relation to this piece of paper at all.

The sheet produced by witness was marked for identification "Defendants' Exhibit M—Cooper."

Q. This Exhibit M, Mr Cooper, does not give the values of the property not in use for railroad purposes, but I assume it will be fair to take it at the average values per acre you have figured in Exhibit 9 for terminal property.

A. No, I don't think that would be fair to either party. You

can see that, take these large cities, we have, for instance, in Tacoma, 680 acres that we own, of which we were not using, at the time I made up this statement, 176 acres. Now, that property varies in value from a very small sum per acre to perhaps $20,000 per acre, and the part we are not using, I couldn't say now, but it might very well be a great deal less than the average or a great deal above. The figures would be misleading to take the average. If it is desired to use this in any way in a money sense, I think that I will have to figure it out for you in some way. It is going to take perhaps two weeks. This is a very small, insignificant-looking piece of paper, but to take and analyze it and put it in a shape that would be of any value to you it would probably take two weeks' work.

Q. Well, we may not require you to do it. We will let you know a little later. Now, Exhibit M, as I understand it, Mr. Cooper, then, is a statement which shows substantially, as of this date, the area of the terminal properties of the Northern Pacific Railway Company, at the points specified in the exhibit, together with the area used for railway purposes and the area not used for railway purposes?

A. That is correct.

Q. And that used for railway purposes is of two classes: one class that is used by the Northern Pacific Railway Company, and another class used by others than that Company?

A. I think it would make it clearer if you put it this way: that this statement is segregated to show the area in each terminal used by the Railway Company for railway purposes; the area used by other parties than the Railway Company (which means property we have leased to others and is in use by them for the time being); then again, property that is not used by the Railway Company or anyone else, that is lying idle; the three together making the total area that we owned at that time.

Q. Now, under the head of "used by others," being property which you have leased to others, is that used by other railroads,

do you mean, or by other commercial or manufacturing institutions?

A. By commercial business, industries, all kinds of business that require side-track facilities.

Q. Is there any considerable property outside of the terminals, as shown by this Exhibit M, which are included in your valuations in Exhibit 9, not used for railroad purposes at the present time?

A. No; certainly the bulk in value of the property which we own and which we are not using today for railroad purposes, are in the terminals; but all along the line we lease property for all kinds of purposes, for the time being, our leases being subject to termination on short notice; and in the aggregate there must be quite a considerable area so leased, I could not say how much; but we lease all of the property and get a rental from it, which rental aggregates about $300,000 a year, and is turned in to our earnings. In other words, we have this property which we will require for railroad purposes some time, most of it in the very near future. Rather than let it lay idle we use it for some beneficial purpose, get what revenue we can out of it and turn that revenue into our earnings.

Q. With reference to these terminal properties referred to in Exhibit M, is it not true that a very considerable portion of these terminal lands were donated to the Railroad Company in order to get them to locate their roads or their terminals at or near the points where they are?

A. It is not true.

Q. Well, what portion of them were donated?

A. I could not answer that. Your question was "was there a considerable portion?"

Q. Yes.

A. Now, that is a very elastic word. I don't know whether you mean a half or a quarter, or one per cent or ninety per cent.

Q. Well, I will tell you what I mean, Mr. Cooper: When

you handed me first this Exhibit M there was attached to it what I took to be a detail of this exhibit and what upon the face of it appeared to have reference to terminal properties, and in looking at that I found one heading under it "Properties that were purchased, Properties that were donated," and I will ask you to state from that, if it shows it, what portions of these terminal properties were donated to the Railroad Company.

A. I have never prepared a statement showing how much of the terminal properties were purchased or how much were donated.

Q. By whom is that paper at which you now look signed?

A. Thomas Cooper.

Q. I will ask you whether that was not made up in connection with this Exhibit M?

A. No, sir.

Mr. HOW: I object to the question as immaterial, improper and impertinent. It was not made in connection with it at the same time. I think the question is impertinent. He has got hold, by mistake, of a memoradum made by this witness and signed by him; he doesn't know what it is, he wants to find out.

Mr. DURMENT: Well, I do know what it is.

The MASTER: Wait a moment, gentlemen.

Mr. HOW: He wants to find out. He is fishing, and he has no right, I submit, and the Master ought to prevent his examining or seeking to examine papers—

The MASTER: I think enough testimony has gone in already with reference to this paper, to which his attention was directed at the time the question was asked, to justify the asking of the question. That is, I think now he is searching for the sources of information contained in this Exhibit M, and for that reason it seems to me it is proper for the question to be answered.

A. No, sir.

Q. When asked to prepare a statement showing the properties included in the valuations in your Exhibit 9, which were

not now in use for railway purposes, you suggested that it would require very considerable time, work and expense to do so, that you had for the purposes of the hearing in the Spokane rate case, I think, made up such a statement as to the terminals, and suggested that that might answer the purpose and save the time and expense; thereupon you handed me a paper or schedule which you said contained such information. When handed to me, that paper or schedule consisted of two sheets, each of which was signed by you; the first sheet or statement was headed "Statement showing total area of the following terminal properties of the Northern Pacific Railway, subdivided to show quantities now used by Railway Company, quantities used by others and quantities not in use;" the second sheet, which was also signed by you, purported to show, with reference to the same terminals, apparently the values of these various properties and what parts of them had been purchased by the Railway Company and what parts of them had been donated to the Railway Company; when I handed the schedule back to you and said that we would be satisfied to take that if the Complainant would, you tore off the first sheet and retained the second. I now ask you to produce the second sheet which you handed me, that we may use it in evidence.

Mr. HOW: May I have the privilege of interposing an objection without being criticised by counsel for it?

The MASTER: Interpose your objection, Mr. How.

Mr. HOW: I object, on the ground, first, that the question purporting to state the facts does not state the facts; second, that it is immaterial, irrelevant and not proper cross-examination and is seeking to call for information which does not exist in the statement asked for, according to the testimony before the Master. The testimony before the Master is that this other statement has no connection whatsoever with this statement, if I remember it correctly. Counsel seems to be very curious to find out what the other statement is. I object to the counsel

asking the witness to produce all papers that he has got on every possible subject in order that they may find out whether there is anything material to this case. If they ask for information that is material to the case, and if they ask for information that is immaterial, I shall follow the precedent that I have been following for ten days and not object to it, but I don't like impertinence by seeking to examine into private records of this witness which he has testified have nothing to do with the subject before the Master.

Mr. DURMENT: Well, I submit, your Honor, that if the counsel's statement is true, the best way to prove its truth, and the only way in this case, is to produce the paper and it will speak for itself, or at least submit it to the Master.

Mr. HOW: You, as a lawyer, make that suggestion?

Mr. DURMENT: I do, yes sir.

The MASTER: I think, Mr. Dument, that you ought to make it appear that there is some connection between the paper in his possession and matters concerning which you wish to examine him in cross-examination pertinent to the case, and also, of course, draw out, if you can, that it has some connection, at least, with Exhibit M. Of course I want to give you the fullest latitude, but it is not proper to go perhaps "fishing" for matters which you have no right to have the benefit of.

Mr. DURMENT: Well, your Honor, they hand to me what they say is a statement made up for the purpose of showing certain things and ask me to take it on that matter. Now, I take the paper handed to me as showing that matter. I examine it; there are two sheets of it; each contains information, as far as I can tell from examining it, with reference to these matters. When I say I will take it and go to offer it in evidence they separate it and hand me half of it. What more showing can I make unless counsel will allow me to use it and examine it for myself? I am willing to take it and examine it and if it appears upon the face of it that it has no connection with this, I

will drop the matter.

The MASTER: I don't think because of the mere fact that he handed that to you and there was attached to it a paper which the witness says has no bearing, and which as yet appears to have no bearing upon the case, you have a right to inspect that paper, necessarily.

Mr. DURMENT: Well, without inspection may I have it marked for identification? I will ask the witness to produce it that it may be marked for identification.

The MASTER: It may be marked for identification but not for use in this case.

Mr. DURMENT: I ask to have it marked for identification.

Mr. HOW: I object to producing the paper at all. In the first place, the exhibit handed by the witness to counsel did not consist of two sheets. It consisted of two entirely separate papers. This one, Defendants' Exhibit M, is separate and distinct, and entire and complete, in itself, signed by the witness as of a certain date. The other one he has testified has nothing to do with it. It was handed to counsel by mere inadvertence. He did (of course excusably) make a casual examination of the second paper, and perhaps misunderstood its exact purport. Now, he wants it. He doesn't know what it is. I object to producing it and advise the witness not to produce it.

The MASTER: I am inclined to think, as the case now stands, I shall have to sustain the objection.

Mr. DURMENT: An exception. We ask to have the paper marked for identification at this time by the Reporter.

The MASTER: It is not an exhibit.

Mr. DURMENT: Well, the paper, then.

The MASTER: They refuse to produce the paper.

Mr. HOW: We won't produce it.

Mr. DURMENT: I will ask the witness and counsel, what becomes of their vaunted willingness and offer, at the beginning of this trial, to produce and exhibit to us every paper and figure

used by them in making up these figures, when he has produced here and handed us what he at that time stated was used in making up the figures for the Spokane rate case.

The MASTER: Well, if that paper has any connection with the paper which has already been submitted here, it would be a different question, but he says it has not.

Mr. DURMENT: Your Honor has ruled that the information that I obtained from an inspection of it does not lay any foundation for a question, nor afford any evidence?

The MASTER: I haven't ruled that you will not be permitted—

Mr. DURMENT: Your Honor has ruled that we cannot require an inspection of it to determine. I suppose that means we have got to take the witness' word for it, does it?

The MASTER: I think that I shall have to sustain the objection in the present state of the testimony.

Mr. DURMENT: Well, at this time we will ask for an adjournment to apply to the Court for an order to require the witness to produce and submit that paper to us.

The MASTER: I shall not require counsel to produce the paper. If they see fit to produce it, all right. If they do not, I shall not make an order now to require it.

Q. Is it not true, Mr. Cooper, that this paper to which we have referred and which was fastened together with this Exhibit M when you handed it to me, purports, upon the face of it, to show that certain portions of these terminal properties were donated to the Railroad Company?

A. The paper that you are talking so much about and having so much fuss about was a statement that I prepared, at the request of Commissioner Prouty, in the Spokane rate case. He told me to prepare several statements; one of those statements is Exhibit M; the one we are talking about is still another statement, complete in itself, and, while on the same general subject, has no connection with Exhibit M.

Q. No, but it has reference to terminal properties that are referred to in Exhibit M?

A. It refers to the entire property, the entire right-of-way and terminals.

Q. Including the terminals?

A. Including the terminals.

A. And is in conformity with your testimony given in the Spokane rate case, is it not?

A. And is a part of my testimony in the Spokane rate case.

Mr. HOW: Now, I will tell you what the paper is, if you want to know, and you have tried every means of finding out; now I will tell you.

Mr. DURMENT: No, I don't care to take your word for it, I will look at the paper.

Mr. HOW: May I tell it to the Master?

Mr. DURMENT: At this time I object to interrupting me in my examination.

Mr. HOW: May I explain it to the Master?

Mr. DURMENT: Not until I am through, Mr. How.

The MASTER: Proceed, Mr. Durment.

Q. And you have already said the values here in Exhibit 9 were based upon your testimony and the figures you made for the Spokane rate case.

A. I have said that I used some of the figures that I used in the Spokane rate case in this case.

Q. You have said, if I remember right, that you took the valuations made up for the Spokane rate case, and outside of Minnesota you changed certain of those figures, for particular reasons which you have stated, and then you added to them the actual prices paid for property since that time; and that was the basis of your valuations in Exhibit 9, as you have testified, is it not?

A. I have not said that.

Q. Well, is that not true?

A. It is not true.

Q. Well, wherein does it differ from the truth?

A. You put in the words there "outside of Minnesota." I don't know why you said "outside of Minnesota." You put the words in and it specified the whole.

Q. Well, we will strike out the words, "outside of Minnesota."

A. Then read it to me, please.

The last question was repeated by the Reporter, omitting the words "outside of Minnesota."

A. That is substantially correct.

Q. Now, this paper which you say we have been "making so much fuss about" and which you say was made up by you, contains your valuations, or the values as fixed or estimated by you, of the terminal properties in use, or some of them, does it not?

A. I would like to answer that just a little bit differently and get the thing straight. I will read the heading of this paper, which tells just what it is. "Statement showing—"

Mr. HOW: I don't think he wants you to.

WITNESS: "Statement showing total area and valuation of right-of-way and terminal grounds Northern Pacific Railway Company, subdivided to show area purchased and valuations thereof, and area donated and valuation thereof." That is the heading of the paper, and what follows, of course, is the information.

Q. And that does show that some portions of these terminals referred to in Exhibit M were donated, does it not?

A. I have not segregated, in this paper, the terminal grounds, but undoubtedly some of the terminal grounds shown in Exhibit M are included in the area donated.

Q. And that undoubtedly—

A. No, I want to correct that, I want to change that answer. Upon further reflection, I am not at all sure that any of the terminal grounds were donated. I think the area donated on

this statement is all or substantially all right-of-way. I cannot recall, from memory now, any donation having been made of terminal grounds, but I am talking now from memory only.

Q. And you may be mistaken about that?

A. Being human, yes.

Q. Now, as to the right-of-way in that statement, donated, did you include that which had been donated by the government under the grant, or by private individuals?

A. I included all right-of-way which was donated to us from any source; that is to say, all right-of-way for which we did not pay actual money or some other consideration.

Q. And that exhibit shows your estimate of the value of that, does it not?

A. Yes, sir.

Mr. DURMENT: Now, we ask to have this marked as an exhibit. I think we have shown its connection with this case sufficiently.

The MASTER: Isn't that so, Mr. How?

Mr. HOW: Oh, certainly.

The paper referred to was marked for identification "Defendants' Exhibit M—1, Cooper."

Mr. DURMENT: We offer in evidence, as a part of the cross-examination of this witness Defendants' Exhibits "M" and "M-1, Cooper." The witness has stated that these are the only copies he has. We will have copies made and turn them back to him, if that is satisfactory.

This was agreed to.

Q. Referring to Exhibit 9, under the head of Terminals, we have, Spokane, Tacoma, Seattle, Everett, Bellingham, South Bend, Aberdeen and Hoquiam. At the risk of repetition I will ask you whether the title to these various terminal properties at the places mentioned in this Exhibit 9 are in the name of the Northern Pacific Railway Company or in the name of some other corporation for its benefit?

A. In the name of the Northern Pacific Railway Company.

Q. In making up your values to which you have testified in Exhibit 9 and other exhibits, you have fixed values upon properties in Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon. I suppose there is no reason why your judgment as to values would be more accurate or entitled to more weight in any one of these states than in the others, is there?

A. Well, I am more familiar with some of the properties than I am with others. In other words, my familiarity with every part of the Northern Pacific system is not absolutely the same, but I am quite familiar with all of it and I think capable of giving a judgment and estimate of the value of any part of it.

Q. Would your opinion or estimate as to the value, in your own judgment, as to lands in North Dakota or Montana, for instance, be entitled to any less weight than as to the value of lands in the other states mentioned?

A. I think not.

Q. In valuing these properties as an entirety (that is, the properties of the entire system), was there in your mind any rule of relation as of the values in one state to the values in another? That is to say, were the values in any one state fixed by comparison with the values in any other state, or with relation to the values in any other state?

A. No, each branch line, each piece of the main line, each terminal, all valued entirely independent of the other, and upon my knowledge of the facts on which my estimate was based in each particular case. In other words, when I was valuing property in Tacoma, I was not thinking anything about what property was worth in St. Paul, and so on.

Q. Your valuation of the Minnesota properties, then, would not, in your opinion, be entitled to any greater weight than your valuation of properties in other states?

A. No, I don't think so.

Q. Would the records of your office show the total receipts, year by year, of the Northern Pacific Railway Company and its predecessor the Northern Pacific Railroad Company, from the sale of lands from its land-grant?

A. No; we do not keep that record in the land department, that is kept in the Comptroller's office.

Q. Then if we wanted a statement of those made up, we would have to go to the Comptroller's office rather than to your office?

A. Yes.

Q. Would the records of your office give the total number of acres which were acquired by the Railway Company or its predecessor the Northern Pacific Railroad Company, under the act of Congress making grants of public lands in aid of the construction of this railroad?

A. Yes; but the land-grant is not yet adjusted; we can't tell, within two or three million acres, how many acres we will ultimately get title to. Our estimate now is that we will ultimately get title to about forty million acres. That is the best that anyone could figure out at this time.

Q. By that you mean that the total lands which will pass from the government under these grants will be about forty million acres?

A. That will be the area to which we will get title under the charter of 1864.

The MASTER: That includes the St. Paul & Duluth?

WITNESS: No, sir; that is only the Northern Pacific Railroad land-grant.

Q. You have been connected with the land department of the Northern Pacific for many years; is it not true that many of the lands west of the Missouri river contain much valuable timber?

A. Yes.

Q. What were the prices at which the lands of the Northern

Pacific have been held west of the Missouri river, in the last ten years, say?

A. You understand that "west of the Missouri river" is an enormous territory.

Q. Yes.

A. I suppose you mean from the Missouri to the Pacific ocean; and there is such an infinite variety of lands there, and such variations in prices, that an answer will not convey much meaning. But the range in prices in the territory you have named would be from twenty-five cents—we have sold lands, I think, as high as fifty dollars an acre, timbered lands. I remember that we have sold some for twenty-five cents, but the maximum price at which we have sold I can't recall. But the average of all the lands the Company has ever sold, (which will probably give you what you would like) from the beginning, is approximately $2.50 an acre, of the entire land-grant.

Q. Now, in fixing that average of $2.50 an acre, or working it out, do you include the lands which have been paid for by bonds which the road had issued?

A. I think that must have been done; figures were made up by taking the whole number of acres sold. The total net proceeds as furnished me by the Comptroller, dividing one into the other, produced (my recollection is) exactly $2.50 per acre and a fraction of a cent. But how the Comptroller treated these bonds I don't know.

Q. Turn to your Exhibit 9, and will you please just state which of these roads or properties, if any of them, are not yet opened to use for railway purposes?

A. You will find on the exhibit notations showing that the new line from St. Regis to Paradise, a distance of 20.25 miles, is under construction; also the new line from Cul-de-sac to Grangeville, being designated as the Nez Perce and Comas branch, a distance of 46.65 miles, is also under construction; also that on the proposed new line from Tacoma to Tenino we

have purchased 28.06 miles of right-of-way but have not yet commenced construction; also that on the lines of the Missouri River Railway Company, being lines contemplated, running from Mandan north and from Mandan south along the Missouri river, we have purchased 114.18 miles of right-of-way, but have not yet commenced the work of construction; and also that on the proposed new line of the Gray's Harbor and Columbia River Railway Company we have acquired 19.05 miles of right-of-way on the north bank of the Columbia river between Kelso and Gray's bay, and on which construction has not yet been commenced. With these exceptions all of the other lines shown on Exhibit 9 are under actual operation.

Q. Is it not true, Mr. Cooper, that within the past five years, the Northern Pacific has built branches, or perhaps portions, of the main line into new countries, for the purpose of developing the countries, countries in which there was not a then present traffic to serve a road profitably?

A. That is true; we always have to do that. That is to say, we anticipate the development of traffic that will come after construction is begun. We determine, before we build, that the country is capable of being developed, that there is sufficient traffic that can be had, when developed, to warrant the construction of the line. Then we go ahead and build and the development commences. It generally, of course, has commenced to some extent before we build, and usually follows very rapidly after we build. So that it is only a question of a very short time when the line will commence to be remunerative, as a rule.

Q. How many miles of railway of the Northern Pacific system, as it is to-day, have been built into new sections or country, within the last five years, for the purpose of developing it?

A. I couldn't answer that; I haven't the figures with me.

Q. Would it be several hundred miles, in your opinion, or more or less, say, than 300?

A. I couldn't try to answer that. There have been a number of lines extended, and the mileage of each one I don't keep in my head and I would have to look up the records before I could determine that.

Q. You have testified, in arriving at your valuations as given in Exhibit 9, how you made up the valuations or figures which you have fixed with reference to farming sections; you very generally took what you estimated to be the market value and multiplied it by 3 to get the value for railroad purposes, or the cost of acquiring it; as to cities a less multiple would have to be used, you said, and gave reasons for it, and no fixed multiple for cities could be given, but each city would depend, and each piece of property, upon its own surrounding circumstances; also, that at a conference of representatives of the various railroads, including among others the Rock Island, as I understand, the question was discussed and it was concluded (or found to be the concensus of opinion, rather), that that was a fair way to proceed. Now, the information we have is that the Rock Island road, for its right-of-way in the city of St. Paul, paid, actual consideration for the purchase of it, $150,000, and that it has carried that valuation into its reports, using a multiple of 6, at $900,000. Now, if that be true, is that following any rule that was adopted at that conference?

A. I am trying to remember if the Rock Island was represented there at the meeting held in my office. I think it was, but I am not positive as to that. In the discussion that we had in my office, there was no rule adopted that anyone was obligated in any way to follow, as to what he should do in the matter of the percentage that he should put on as representing the difference between market value and value for railway purposes. We exchanged experiences, and what I intended to convey by my former answer was that we did not all agree as to what percentage should be added, but that a majority thought that a multiple of 3 should be used in agricultural districts and

in the smaller towns; that when we got into city property or the larger towns, it was then a question of each particular piece, to be determined by itself. Now, I know nothing whatever about the Rock Island property, where it lies, or anything about it, and don't know whether a multiple of 6 or 60 is all right, don't know a thing about the subject.

Q. I think that possibly my question was framed upon a misunderstanding of the information I had. I will explain, at this point, because I want to ask another question that will have a bearing,—as I understand it, the point is that the Rock Island Railroad had reported to the State its valuation on its properties in here at $900,000 for which it in fact paid only $150,000 cash, and that this valuation was made by the same men who were employed by the Northern Pacific to fix the valuations which you have used in your figures here, Watson, Taylor and Read.

Mr. How: Do you know when they acquired the right-of-way?

Mr. DURMENT: I don't. I will find out.

Mr. How: I should think that would be very material.

Mr. DURMENT: That might make a difference.

Q. But with that explanation I will ask this further question: Was there any agreement between the representatives of the railroad companies, or any concert of action, by which they selected the same real estate men to value their properties in the city of St. Paul?

A. The representatives of the different railroads having in charge the matter of making up the valuation of the right-of-way and terminal grounds for the State, had a meeting at my office, and the suggestion was there made that we employ three experts, in each of the three large cities, St. Paul, Minneapolis and Duluth, to value all of our properties; and that was agreed to by all of the roads excepting the Milwaukee Company, which already had its valuation made. We then discussed who the

three real estate men would be in each city, and the gentlemen were selected in that way,—for St. Paul, Messrs. Watson, Taylor and Read. Each company was entirely free to use the experts' figures or not, as they saw fit, or to modify them, nobody obligating themselves in the matter at all. We simply wanted to get the information in that way, and it was deemed best that we should employ the same men, because the valuable part of the railroad property in St. Paul is that which lies between Sixth street and the river and below Sibley street; and that is owned by the Milwaukee Company, the Union Depot Company, the Great Northern, the Omaha and the Northern Pacific, all side by side; therefore, the same men could do the work for all of the different companies to better advantage than if each company hired a single man or more men to go over for itself; also it was more economical to do it in that way; the expense of the three experts was divided among all of the companies in proportion to the amount of the property that was valued for them. But, as I say, no company was under any obligation to use those figures.

Q. Did the Northern Pacific Railway Company use these three real estate experts, or any of them, to make purchases or to negotiate for the purchase of its Commercial street properties and these other properties?

A. No, sir, none of them; none of them have ever made any purchases for me.

Q. To cover technically the question asked before: These properties were purchased in the name of the Northwestern Improvement Company, and really by them, it appears, in the first instance, and turned over by the Northwestern Improvement Company to the Northern Pacific Railway Company. Did these three experts, or any of them, negotiate those purchases on behalf of the Northwestern Improvement Company? I mean the Commercial street properties.

A. No; none of those men, none of the three experts in St.

Paul, had any connection, either with buying or selling, the Commercial street property to the Northern Pacific or the Northwestern Improvement Company.

Q. Had either of these three experts, within recent times, (either shortly before or after their employment to make valuations), been employed by the Northern Pacific Railway Company or the Northwestern Improvement Company to buy or sell property of any sort or kind?

A. Since I have had charge of the buying of property for either of the two companies (that is December, 1904), not one of these three gentlemen has had anything to do with purchasing any property or selling any property for us, excepting that one of them, now within three months, I have told if he can buy a particular piece of property at a certain price to do so. He has not done it yet.

RE-DIRECT EXAMINATION.

By Mr. How:

Q. Mr. Cooper, the granted right-of-way under the charter of 1864 of the Northern Pacific Railroad Company, now owned by the Northern Pacific Railway Company, is 400 feet in width. Do you use that 400 feet in width necessarily for railroad purposes during its entire length?

A. No, not for its entire length.

Q. Why do you not dispose of the portion of the right-of-way which you do not use, if there is any that you do not reasonably, in the near future, expect to use?

A. The United States Supreme Court, in the so-called Townsend case, has decided that we cannot sell any portion of the 400-foot right-of-way granted by the charter of 1864, and that no one can obtain an adverse title against it.

Q. What do you understand to be the ground of that?

A. Well, the Court said, in its opinion—

Mr. DURMENT: That is a question of law, isn't it?

WITNESS: The Court said, in its opinion, that Congress in its wisdom decided that a right-of-way 400 feet wide was necessary for the Company to have in order to fulfill its obligations under the charter, those obligations being to transport munitions of war, mail, government employes, troops, etc., and that Congress having so said, it must be kept for that purpose and cannot be sold or in any way alienated. As a matter of fact, we need the 400-foot right-of-way, generally speaking, at all stations; we need the major part of it where we have heavy cuts or heavy fills and where in the snow-country we use out to the limit for snow-fences; also, it is valuable to us in the matter of fire protection. There are, no doubt, places on the line where, were we permitted, we could do with a lesser width, but Congress and the Supreme Court, together, having settled the matter for us, we do not worry over it.

Q. Could you state generally what parts of your right-of-way are leased, at what prices and for what purposes?

A. At stations we lease our right-of-way to parties whose business is of such a character as to require side-track facilities. We do not allow dwelling-houses or retail stores or hotels and a number of businesses of that character; in other words, we do not wish to lease our right-of-way so as to come in competition with the townsite. But there are certain kinds of business—lumber yards, coal yards, elevators, warehouses, agricultural machinery—that require and must have side-track facilities in order to conduct their business, and to business of that kind we make leases. At all of the smaller stations our rental is arbitrary; that is to say, it is too much trouble to get the value, therefore we have a schedule which is based on the amount of track frontage (frontage on the track) covered by the lease and with a minimum, which I think is $10 per year, then advances. At all of the larger stations, instead of using that arbitrary rental basis we use a 6 per cent basis, that is to say, the rental is at 6 per cent of the value of the property. All of our

leases, excepting perhaps less than one per cent, are made on what we term the "indefinite term" form; that is to say, it is a lease that runs along indefinitely, but subject to cancellation, at the option of the Company, upon from thirty to ninety days' notice. In the case of grain elevators and grain warehouses, the time for cancellation is six months. The very small number of leases which I refer to as an exception (less than one per cent) are what we call long-time leases. Those leases have in them a provision giving us the right of cancellation upon not exceeding one year's notice, we paying for the improvements which the lessee may have placed upon the property. That form of lease we use to protect us in the event that we require the property for railroad purposes, and it is also in harmony with the decision of the Supreme Court to which I have referred, that is, that this right-of-way must be kept for railroad purposes; therefore, when we make a long-time lease we always put this provision in so that we can quickly get rid of the lessee if we require the property for railroad use. Now, we have still another class of leases, between stations, which we call cultivation and pasturage leases, and really that term explains what they are. They cover the portions of the right-of-way that we are not now using, principally of the 400-foot right-of-way, and pending the time when we may have to use it we allow the adjoining farmer to go on and cultivate it, paying us a very small rental, fifty cents an acre per annum, as a rule; and in that way whatever property the Company is holding for future use is in the meantime being made use of, wherever we can, to the fullest extent, and the revenue derived therefrom—which as I have already testified amounts to about $300,000 per year—goes into our earnings.

Q. It is accounted for like any other railroad earnings, in the same manner?

A. Yes, exactly.

Q. Defendants' Exhibit M shows in your terminal proper-

ties about 1,600 acres which the Company has acquired but which is either being now used by others or not used at all, that property being included within twelve several terminals. Will you state for what purpose and why that property was acquired by the Railroad Company—property which is not in use by the Railroad Company at this time?

A. Looking over the statement, practically all of that property (I refer now to this terminal property which is being held by the Company for use but not now in use for railroad purposes), has been acquired since the reorganization, that is to say, since September 1, 1896, and the greater part of it in the last few years. We have seen our business grow from gross earnings of fifteen millions of dollars per year to sixty-eight millions of dollars per year, all within a period of thirteen years.

Q. Can you, with the assistance of this memorandum, state what the gross earnings of the road were in 1894?

Mr. DURMENT: We object to that as immaterial at this point, as incompetent at this time and no sufficient foundation laid. And for the information of the Court and counsel, I will explain that if the question of gross earnings or the growth of gross earnings is material at all and is to come into the case at all, we shall want to cross-examine considerably at length upon that point, and if this is not the witness who knows those facts we cannot cross-examine him, and if he does it means that we start in anew upon cross-examination.

Mr. HOW: I do not believe the objection will be a serious one when I explain, as I am willing to do, the purport of this line of questioning. The witness is going to testify to the purchase by the Northern Pacific road of a large amount of terminal property which it does not immediately start to improve. He is going to testify concerning that by explaining that in 1894 the gross earnings of the Railroad Company were sixteen millions of dollars, in 1907 sixty-eight millions of dollars; that the

growth of the system has been and is being such that they cannot wait, in order to perform their duties to the public, (of course their gross earnings simply show what their business is) until their business increases so that they overrun, and that they had to acquire them, and that they contemplated when they acquired them that they would improve them but that they have not improved these on account of the depression in railroad properties and the unwillingness of anybody to put any money into them. That is the object of showing this and he is going to merely show that in general figures.

Mr. DURMENT: Counsel for the Complainant having stated that they expect to show later on in the case, by a witness who will be competent to testify and furnish information as to all these matters of gross receipts, and from whom we can inquire upon cross-examination and learn whatever the Road can furnish upon that point, we withdraw the objection at this time.

Mr. HOW: I do state that the Comptroller's office will be at their service with regard to that when we come to the matter of the effect of the rates upon the earnings.

Q. Can you, with the assistance of this memorandum, state what the gross earnings of the road were in 1894, and then on, from year to year, up to and including 1907?

A. Our gross earnings in 1894, stated to the nearest million, was seventeen millions; in 1895, seventeen millions; in 1896, twenty millions; in 1897, nineteen millions; in 1898, twenty-four millions; in 1899, twenty-six millions; in 1900, thirty millions; in 1901, thirty-three millions; in 1902, forty-one millions; in 1903, forty-six millions; in 1904, forty-seven millions; in 1905, fifty-one millions; in 1906, sixty-one millions; in 1907, sixty-nine millions.

Q. Can you state what they are estimated to be for the year 1908 in the nearest million?

A. Sixty-eight millions.

Q. What was the condition of the Northern Pacific system

with regard to facility and economy of operation at the time of the beginning of the receivership in 1893?

Mr. DURMENT: May I inquire as to this, as I did as to the other, the purpose of it? You are really opening up an entirely new field, that apparently is not within the scope of this witness' testimony.

Mr. HOW: This witness has been the General Manager of the road, Land Commissioner and everything else, and all I expect to bring out from him is that at that time the road had wholly insufficient facilities to transact the business that it has to carry on at the present time, that its business is constantly growing and that it must take care of it to a reasonable extent and it purchased this property for that purpose.

Mr. DURMENT: It is with reference to these lands?

Mr. HOW: That is all—these terminal properties.

A. At the time of the receivership of 1893, the railroad property of the Northern Pacific had about reached the limit of its capacity; in other words, we were then being strained to do the business that was then being offered and it could not be handled with economy. We had done a little work in the direction of reducing grades, but the bulk of that work has been done since the re-organization. Our terminal facilities had also about reached their limit, and so on all through with all the different items that make up the railroad system. The comparatively small business we were then doing was just about all that we could do, and in fact we could not do it economically. The business after the re-organization commenced to grow and we had to keep on buying property, buying equipment and enlarging ourselves in every direction, to take care of the business that was being offered, and while I was General Manager two years we did our business at a disadvantage because we did not have as much facilities as we should have had—we were trying to get them as fast as we could, but we could not buy property fast enough, we could not buy equipment fast enough,

could not lay down passing tracks fast enough; the result was that we were hampered in our operation, which means increased cost. But during all these years we have been diligently trying to catch up with the business. The business was ahead of us until a year ago; last year we could not do the business that was offered to us; this year, I regret to say, we can and have some surplus. But, during all these years we have been looking ahead to what we were going to get at all the different large terminals in the way of facilities, and that is what we are doing constantly, all the time, looking ahead,—not a long ways in the future, because the interest on the money invested would not warrant us in looking too far ahead, but within a reasonable time, say ten years, we think we will need some more property here; we go to work and see whether we can buy it at a reasonable price, then we go on to the next point and look around and see the same condition of affairs; and all of the property that the Northern Pacific owns today, or substantially all of it, at all of its various terminals, that it is not using today for railroad purposes, will, I firmly believe, be required for such purposes within ten years, and it may be within a great deal less than ten years, if the business keeps on increasing as it did in the years 1905, 1906 and 1907.

Q. During what period has this property, shown in Exhibit M to be used by others or not used at all, been acquired?

A. The bulk of that property was acquired since the reorganization, and the greater part of it, in fact, since 1900. The Superior property that is surplus is of recent purchase. By that I mean within two or three years.

Q. That is not used at all?

A. That is not in use for railroad purposes. The Duluth properties are somewhat older. The only property that we have purchased at Duluth in recent years was one dock property; all of the rest of it has been owned for some time, probably prior to the reorganization, either by the Northern Pacific

Railroad Company or the St. Paul & Duluth Railroad Company. At St. Paul, all of the surplus properties are recent purchases. Minneapolis I don't remember about. In Spokane, this so-called surplus property, being property not in use for railroad purposes today, is all a part of our 400-foot right-of-way, and I have already explained that we cannot sell it or do anything else with it but hold it for railroad uses. The surplus property at Tacoma was all acquired since 1900. Seattle the same. At Butte we have no surplus property. That means that we have ten and one-half acres that is leased, but it is really not surplus in the sense that we have been discussing. At Everett, this so-called surplus property is all recently acquired, all since 1900. Bellingham the same. At South Bend, Aberdeen and Hoquiam, the figures given, as used by others there, are just some small portions of our terminal grounds that we now have leased.

Q. Will you state, Mr. Cooper, what portion, if any, of those terminal properties shown upon Exhibit M it would be reasonably wise or economical for the Northern Pacific Railway Company to dispose of, having regard to the needs of its operating department during the next six or seven or eight years, and assuming that the business of the Company will increase in the same proportion as it has increased?

A. I would not recommend the sale of a single foot of the properties to which you refer. We will need all of them, and doubtless have to go out and buy more.

Q. Do you know whether or not at the time those properties were purchased it was contemplated that they should be improved to a substantial extent forthwith?

A. Some of them, yes; with some of them we were looking ahead a little.

Q. Why did not their improvement continue?

Mr. DURMENT: We object to that as immaterial.

The MASTER: The objection will be noted.

A. A great many of our plans made a year ago have been postponed because of the financial conditions, and we are going slow in all directions in the way of spreading out our investments until we see how long this period of depression runs. If we have, as looks now, a good crop this year, we will have to go on again, and doubtless will go on again, with a number of various plans that we have been temporarily holding up waiting.

Q. At about page 241 of your testimony, you seem to have in mind that the added percentage within the larger cities covers only cost of supposed improvements that might exist upon the property if it would have to be purchased today. Are there any other elements or things covered by that added percentage excepting the cost of improvements?

A. The added percentage covers more than improvements. It covers (and I think I have said this before but I will be glad to say it again), it covers severance damage, improvements actually there, the cost of purchasing the property and the increased cost that a railroad company has to confront when it is purchasing property as compared with an individual. In other words, the first column, which we call "Market value" in our report to the State Commission, represents just the bare market value of the property based on the value of adjoining property or on such other information as is obtainable. Now, then, this second column, which in State reports is called "Value for railway purposes"—the difference between those two is made up by the various items that I have mentioned. I am not sure that I have mentioned them all; all that occur to me now, however, but it represents (this second column, value for railway purposes), my judgment as to what it will cost the Railway Company to buy that particular property, because of all these various things that enter into it.

RE-CROSS EXAMINATION.

By Mr. DURMENT:

Mr. Cooper, my recollection is that you heretofore testified that this addition which you make over market value, in cases of city property, does not include severance damages, because in cities you buy entire tracts and therefore you would not have to take it into consideration.

A. That is correct. My answer did not limit myself to city property. Of course, where you buy an entire lot, there is no severance damage.

Q. My recollection also is that you have said that as to city property you did not take into account, in your estimate here, this increase over the market value, the buildings or improvements upon the land (I mean buildings or improvements on the land at the time of the purchase), but that this addition you speak of was added for what improvements probably would have been on the land if it had not been used for railroad purposes before that time.

A. That is right.

Q. In looking at Exhibit M-1 another question is suggested. As I understand it, the Northern Pacific Railroad Company and the Northern Pacific Railway Company had no land-grant in Oregon opposite its lines in Oregon.

A. Oh, yes, it had.

Q. Well, had it any right-of-way granted in Oregon?

A. Yes.

Q. Then let me call your attention to Exhibit M-1. I understood you to say that under the heading of this column "Area Donated" you had included all property in the system which the road had not had to pay for.

A. That is right.

Q. According to that, then, all the right-of-way along its line in Oregon the Company had to pay for?

A. That is right.

Q. How is it that there is not included, then, for Oregon, any land for right-of-way donated by the government?

A. Because there wasn't any left when we went to build our line, it had all been taken up by settlers, years before. The only line we own in Oregon is the line from Kalama to Portland, which was built in 1883, and long prior to that all of that land had been taken up. I think it was all "old donation claims." That is the reason why.

Q. Congress in fact passed an act donating a right-of-way to the road over public lands, and, when the railroad came to be built, all of the available public lands had been appropriated for other purposes?

A. Yes.

Q. And you in fact got none in that way?

A. That is right. Our grant from Portland to Tacoma dates from 1870, not from 1864, and prior to 1870 all this land had been taken up, so that when we went to build our line we had to buy our right-of-way.

Adjourned until 10 o'clock A. M., July 17th.

FEDERAL BUILDING, St. Paul, July 17, 1908.

The hearing was resumed at 10 o'clock A. M.

JOHN D. STRYKER,

sworn on behalf of Complainant, testified:

By Mr. How.

Q. Mr. Stryker, will you state your name, your age, your residence and your present occupation?

A. John D. Stryker, age 51, residence Duluth, occupation real estate and loans and investments.

Q. How long have you been a resident of Duluth?

A. 22 years in September.

Q. And how long have you been in the real estate business in Duluth?

A. Ever since I came there.

Q. What has been and is the character of your real estate business?

A. Oh, general real estate business, buying and selling real estate and making mortgage loans.

Q. What particular opportunities have you for becoming acquainted with or possessing information upon values of real estate in Duluth?

A. We keep in close touch with all the transfers, keep a record of all the transfers as reported.

Q. A private record of your own?

A. Yes, and intend to keep as exact as possible track of all real estate transactions in the city of Duluth.

Q. Does your record comprehend the values expressed in the deeds of transfers?

A. Yes; sometimes the consideration is not the correct consideration in the deeds; we usually know that.

Q. You ascertain that outside of the record in such cases?

A. Yes, sir.

Q. Were you employed, in the latter part of 1906, to make an appraisal of railway properties in Duluth?

A. Yes, sir.

Q. Will you state how that employment was made and who was employed with you?

A. Mr. Charles W. Hayden (I think Charles, it was Mr. Hayden anyway) came to Duluth—

Q. Of the Great Northern road, in the land department?

A. I think so, yes, sir;—came to Duluth and asked me if I would assist in making an appraisal of the railroad properties at Duluth; that is, for the Great Northern or Eastern (I forget which) and the Chicago, St. Paul, Minneapolis

& Omaha and Northern Pacific roads. And at the same time he made arrangements with Mr. Mendenhall and Mr. Little.

Q. Are they real estate men in Duluth?

A. Yes, sir.

Q. Of wide experience, do you know?

A. Yes, sir

Mr. DURMENT: I object to that as immaterial, no sufficient foundation laid.

Q. Do you happen to know what their experience has been in the real estate market?

A. Yes, sir.

Q. Are they men of wide experience?

MR. DURMENT: That is objected to as incompetent, immaterial, no sufficient foundation laid and as hearsay.

The MASTER: Objection noted. Proceed.

A. Yes, sir. I could tell how long they have been in business.

Q. I don't care to have you. Will you state, having particular reference to its topographical conditions, the character of Duluth, and with especial regard to its facilities for railway terminals and railway transportation?

A. Why, the topography of Duluth is such that it seems to have fixed the business center of Duluth, the water on one side with the harbor, and then rising right from the water is a steep hill some 500 feet high, so that the business center is necessarily along that water front, and the railroads necessarily,—I suppose that it is necessary that they should come in at the foot of the hill.

Q. On the water level?

A. On the water level, into the center of the city.

Q. How large an area is comprised within the business district of Duluth in that available water level? This is approximately, of course.

A. It is pretty hard to answer that, Mr. How, because there is Rice's Point. It is a very narrow strip, between Michigan street, where business begins, and the water front

Q. How many blocks?

A. About two blocks in the central part. Of course there is Minnesota Point, down at the canal, and Rice's Point, which can be used for railroad purposes.

Q. From your experience, and to the best of your judgment, is the amount of property which may be devoted to railway purposes on the water level unlimited or restricted?

A. It is restricted, limited.

Q. And to what extent? Very much so, or—

A. Yes, very limited; in fact, it is practically all taken up, at the present time, below the business streets. Whatever is done now will have to be to condemn through business property.

Q. How are the railroads which enter Duluth situated with reference to each other? Are their properties adjacent, in the same locality, or separated, in different localities?

A. They are in the same locality.

Q. All adjacent?

A. All adjacent; that is, they don't all come in at one point, but after you get near the center, the terminals are all adjacent.

Q. What particular opportunity, if any, have you had for becoming familiar with values of railway terminal properties in Duluth?

A. I know of the location of all of these terminal properties, and certain of the sales of properties adjoining them, and know something, of course, of the purchases or condemnations which have been had by the Soo and the Wisconsin Central, and the Great Northern, too; or rather it was the Eastern at that time; I remember when they came in and

their purchases; that was a number of years ago.

Q. And you have kept advised of the consideration in cases of transfer or condemnation, as I understand it?

A. Quite extensively, yes, sir.

Q. When you were employed, with your associates, to make the appraisal of the Duluth terminal properties, what course of procedure did you and your associates follow?

A. We were furnished with blue-prints dividing up the city into sections, for convenience, and we went over the values carefully of those sections and determined in our best judgment what those values were.

Q. Were those districts made for you or did you make them yourselves?

A. Well, the maps were sent to us in sections; we didn't follow exactly the blue-prints as they were sent to us. We divided them to suit ourselves.

Q. What guided you in dividing this property into sections?

A. The location of the property and its value.

Q. Well, that isn't quite full enough, perhaps.

A. Do you mean as to getting the values on the property?

Q. Yes. Why did you divide it into districts?

A. Well, we divided it into districts so that we could conveniently put values upon it in that particular district.

Q. But in making a district, why did you make the line of a district at one place instead of another?

A. Well, we did it so as to get as accurate an average as we could of the property in that district.

Q. As I understand it (if I am wrong you are at liberty to say so) the districts were made to include properties that were of the same general character and somewhat similar generally in value?

A. Yes; so that we could get at an average value for the property in that locality.

Q. That is exactly what I supposed.

A. So as to get as accurate as possible the value for the whole tract in that section.

Q. How did you proceed in making your valuations of the property in each district? Did you take up the several tracts included within that district separately, or did you just value the district as a whole, to begin with?

A. We took that up separately, so far as possible. Of course some of these are just one tract, you might say; some of them would vary a little. We went over them carefully and put the total value of the tract as the value for them.

Q. What did you consider in determining the valuation of these respective tracts?

A. The actual market value of the property surrounding it, as near as possible, and the actual value of the property that we were appraising.

Q. Did you appraise the property with any view to the buildings upon it?

A. No, sir.

Q. You appraised merely the bare real estate?

A. As real estate only.

Q. Did you take into consideration any enhanced price which a railroad company would have to pay in the purchase of such properties?

A. No, sir.

Q. As I understand it, you took the fair market value as between anybody desiring to purchase and anybody willing to sell?

A. Yes, sir, that is it.

Q. For a fair price?

A. Fair market value of the property.

Q. When you completed the appraisal of these properties, did you make a report?

A. Yes, sir.

Q. By whom was that report signed?

A. Signed by Mr. Mendenhall, Mr. Little and myself.

Q. And what did you do with that report?

A. We sent it to Mr. Cooper, I think.

Q. Do you recollect whether you made a separate report for each company, or whether it was all in one?

A. It was all in one.

Q. Now, will you state, Mr. Stryker, whether or not, in your judgment and the judgment of your associates, the valuation made at that time was a fair, reasonable and moderate valuation?

Mr. DURMENT: We object to that as immaterial and no sufficient foundation laid, and incompetent, also.

The MASTER: Objection noted.

A. It was a conservative valuation.

Q. Have you considered the question as to whether or not that valuation made in the latter part of 1906 would be a reasonable and proper valuation at the present time?

Mr. DURMENT: We object to that as immaterial.

The MASTER: Objection noted.

A. We have considered it, yes sir.

Q. Have you considered it with your associates?

A. Yes, sir.

Q. Will you state, first, with regard to your own personal opinion how a valuation made at the present time would compare with the valuation made in the latter part of 1906, for the Northern Pacific properties.

Mr. DURMENT: That is objected to as incompetent, immaterial and no sufficient foundation laid.

The MASTER: Objection noted. The witness may answer.

A. It would be higher at the present time.

Q. How much higher?

Mr. DURMENT: Objected to as last before.

The MASTER: Answer.

A. I haven't figured out carefully how much higher, but from fifteen to twenty-five per cent.

Q. Do you know what the opinion of your associates with regard to that is? Have you conferred as a committee upon that question?

A. Yes, sir.

Q. What is that opinion?

Mr. DURMENT: That is objected to as immaterial and incompetent and hearsay.

Mr. HOW: I am merely asking one member of a committee what the opinion of the committee is.

The MASTER: The witness may answer. Objection noted.

A. It is the same as mine; we were agreed.

Q. I show you Complainant's Ex. 21—Stryker and ask you what that is.

A. It is the report which we made December 27, 1906, signed by Mr. Mendenhall, Mr. Little and myself.

Q That is the original report?

A That is the original report.

Mr. HOW: This is offered.

Mr. DURMENT: We object to it as incompetent, immaterial, no foundation laid. In the first place, it is not the proper way to prove values, that is the first objection; the next is that it appears from the testimony of the witness that these are made with reference to a plat and the plat is part of it and is not produced as a part of it. The next is that it includes properties not properties of the Northern Pacific Railway Company but of other railroad companies, and that in the Northern Pacific Railway Company's properties, so-called on this list, it includes a large amount of property that does not in fact belong to it, as appears from the evidence here, but to other corporations controlled by the Northern Pacific.

Q. Will you call attention to what property there is in-

cluded of other railway companies beside the Northern Pacific?

Mr. DURMENT: It is headed here "Great Northern Railway Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company," at the beginning, and I suppose that has no bearing on the case at all.

Mr. HOW: Of course all the materiality of this is the part of the report pertaining to the Northern Pacific property. It includes also Great Northern and Omaha property, but I suppose that is not going to hurt anybody.

Mr. DURMENT: Then you don't offer the Great Northern and the Omaha property, I suppose.

Mr. HOW: No, no, I don't offer that.

Mr. DURMENT: Well, if that is excluded from the exhibit and the record, that part of the objection is withdrawn. The principal objection to this, to be fair with counsel, is the fact that the plat is not produced and, further, that it alalready appears from the evidence in this case, that a large part of the property included under the head "Northern Pacific Railway Company's properties" are properties the title to which stands in other corporations, controlled by the Northern Pacific, but still other corporations.

Mr. HOW: I will telephone for the plat; I don't seem to have it here.

Q. Since you made the valuation in December, 1906, have there been to your knowledge, any transfers of real estate in the neighborhood of the property that you appraised for the Northern Pacific Railway Company or in the neighborhood of any of it?

A. Yes, sir.

Q. What can you say with regard to the consideration for such transfers as compared to the valuations which you placed upon the Northern Pacific properties adjacent thereto in December, 1906?

Mr. DURMENT: We object to that as improper, as calling for a conclusion; it does not afford any information as to the location of the property sold or as to the price for which it was sold; that the comparison should be made by the Master and upon the facts.

The MASTER: Objection noted.

A. They have been higher. Of course you all understand that there has been no railroad property transferred. It is simply real estate on Michigan street and Superior sreet or Lake avenue, in the territory surrounding this railroad property, and those transfers have all been at higher prices. There has been a gradual hardening of prices, increase in values, in that whole central section.

The MASTER: For that same class of property?

WITNESS: Well, you understand, Judge Otis, there haven't been any sales of railroad property, but the properties surrounding the railroad property.

The MASTER: That is, the same class, exactly?

WITNESS: Well, it is practically of the same class; if you were to take the railroad off and put in streets it would be the same kind of property. It would become mercantile property then.

Q. In forming your opinion of the valuation of the Northern Pacific terminals in Duluth covered by this report, you had in mind your estimate of the value of the surrounding adjacent business property?

A Certainly.

Q. And you had in mind certain valuations for the purpose of assisting you to determine the valuations of this terminal property?

A. Certainly; we knew what the other property was selling for.

Q. And have any of those properties, which you had in mind at that time at certain valuations for the purpose of

assisting you, since been transferred?

A. Yes, sir.

Q. At a price higher or lower than those which you had in mind to assist you to make these valuations?

A. At a higher price.

Q. How much higher? Very much higher?

A. In some cases, 50 per cent; in some cases, 100 per cent.

Q. Considerably higher?

A. Considerably higher.

Q. So that your judgment is that this property should be valued higher than you valued it in December, 1906?

A. If we were to make the appraisement today, we would make it higher.

Q. And considerably higher?

A. From 15 to 25 per cent, in the aggregate.

Q. Can you give any specific instance of some such transfers which you think justifies you in your opinion that this valuation was too low, too moderate?

Mr. DURMENT: We object to that as incompetent and immaterial.

The MASTER: Objection noted. You know, gentlemen, I don't claim any right to pass upon the propriety of the question unless it is so objectionable that it appears to be clearly and radically impertinent or for an improper purpose. Proceed.

A. Yes, I know several instances.

Q. Will you state some?

A. Property on the lower side of Superior street, from Second avenue east to Fifth avenue east.

Q. How near any Northern Pacific property?

A. That property on Michigan street would be right south of it, on the south side of Michigan; this would be on the upper side of Michigan street, some 1300 feet there, I think.

1311 lineal feet on Michigan street, put in at $100 per front foot.

Q. You mean in your valuation?

A. Yes, in our valuation.

Q. Made to the Northern Pacific Railway Company?

A. At that time, the property right north of this on the upper side of Michigan street, between Michigan and Superior streets, was held or was sold,—well, it has been sold since then in some cases as high as fifty per cent, and some as high as 100, above what it was at that time.

Q. And above those figures?

A. Yes, above those figures. Well not above these figures; of course, none of this has been sold, but above that property, across the street on the north, has been sold at from 50 to 100 per cent, in several lots, higher than it was salable at that time.

Mr. DURMENT: Superior street frontage?

WITNESS: Superior street, running through to Michigan. Now, the corner of Superior street, running through 115 feet to Michigan street and Second avenue east, has just been leased on the basis of $600 a front foot at 5½ per cent for 99 years, and about this time they paid $350 for it.

Q. And that is adjacent to what property of the Northern Pacific that you valued?

A. That would be Second avenue east. This Michigan street property would be right in the rear of it.

Q. Are there any other such instances?

A. Well, it would be true between First avenue east and Lake avenue; property in there has sold for fifty per cent higher than it was offered at at that time. Between Lake avenue and Fifth avenue west, Superior street property that could have been bought at that time, inside lots for $1000 a foot, well, some of it sold about that time for $900, you can't buy any of it today for fourteen or fifteen hundred. The

corner on Superior street at Second avenue west we sold to Capt. Sellwood, last April, I think it was, (a year ago this last April) for $100,000, and we would have sold it in 1906 for $80,000. Property all along on Superior street and on Michigan street has very materially advanced. The city assessor assesses the corner of Superior street at Third avenue west at $55,000. That is on the basis of fifty per cent, or $110,000; and two years ago (that is, the assessment for 1906) it was assessed at $32,500. On Lake avenue I could tell you and Fifth avenue west, instances all around, surrounding this property.

Q. I wish you would, if those properties which you mention are adjacent to the Northern Pacific terminals or Northern Pacific properties which are included in this valuation; I wish you would go on with any further instances that you know.

A. Well, I don't think of any transfers on Michigan street right adjacent to your property, but property that sold two or three years ago there for $300 a front foot would sell readily now for $500 a front foot. It has all improved. There is none for sale now, except one lot right near Lake avenue, for sale at five or six hundred dollars a front foot, two 25-foot lots. On lake avenue, just below Michigan street, we sold a lot, I think it was in 1906, for $9,500, and last year we sold it for $15,000. That is a 50-foot lot running through from Lake avenue to the Northern Pacific slip. And we were offered—

Q. That, you say, runs through to a portion of the property covered by your report here?

A. To the slip; it is between that property and one of your docks. And we were offered, last summer, for 49 feet just below that, running through, some time after we had sold the other, $20,000 for 49 feet, and the parties wouldn't take that.

Mr. DURMENT: Can you state the depth of those tracts?

WITNESS: There is the Northern Pacific in the center of them; it is 260 feet deep; from Lake Ave. to the slip. On Commerce street we sold (I can't tell you just when, the Leithhead Drug Company building is erected on it), we sold 50 feet to them for their purpose at $23,250; that was 150 feet in depth, I think. Superior street property, between Third and Fourth avenues west, I know of offers of $1,500 a front foot being made there and refused.

Q. And what did you consider it worth when you made this report?

A. About $1,200. We sold one lot there for $1,200 a front foot between Second and Third avenues west, on the upper side, some time in 1906, that is considered worth now $1,600 a front foot. The whole tendency of the real estate situation at Duluth has been increase in values, in this central part of the city. Then, of course, the steel plant coming in there last year, has materially increased the value of property in that locality. They bought 1,600 acres, in round numbers. The Soo road coming in this year has also tended to increase the values, and the Wisconsin Central buying up a large tract has increased the values in the central part of the city. First street has materially increased in value. Of course, that doesn't adjoin this property, but I speak of it simply to show that the whole tendency of that inside property has been to an increased value.

Q. What influence did the values, as you considered them in December, 1906, of these properties which you have spoken of as having been sold since that time, or for which offers have been made since that time, have upon your estimate of the valuations of the Northern Pacific properties covered by this report when the report was made?

A. In making our appraisement, the sales or values of those properties in the vicinity of the Northern Pacific's properties, were taken into consideration and entered largely into the valuations which we put upon this property.

Q. And if I understand you correctly, you did not allow to enter into your estimate any consideration of the difficulty which a railroad corporation would encounter in the purchase of property, or any value of any supposed or actual improvements, buildings upon the property, or any value of the railway superstructure, in the way of rails and ties, etc., but only its fair market value as between one willing to sell and one wishing to purchase for any purpose for which the property might be available; is that correct?

A. That is correct, yes, sir. We didn't consider the railway improvements in making our valuation.

Mr. How here produced a plat.

Q. Will you look at this plat placed before you and see if that shows the Northern Pacific properties covered by your report, and, if so, (simply for convenience of counsel, and we hope that it shall not have to go into the record) how those properties are indicated on this plat, by what color?

A. Well, of course, this doesn't show all of them. It shows to 13th avenue west, I think. It shows from the east end of the city, where we appraised it, to 13th avenue west.

Q. This is the most valuable part of the property?

A. This is the most valuable part.

Q. Which is the Northern Pacific property?

A. The Northern Pacific property is colored yellow, the Great Northern green, and the Omaha purple.

CROSS-EXAMINATION.

By Mr. DURMENT.

Q. You have said that in fixing these values in this Exhibit 21—Stryker, you didn't consider the fact that it was peculiarly useful or valuable for railroad purposes?

A. No, sir.

Q. Nor that it was improved with railroads?

A. No, sir.

Q. You considered it as to what it would sell for as between a man who wanted to buy and a man who would sell?

A. Yes, sir.

Q. For any purpose?

A. Of course we didn't exclude its use as railroads. We didn't take that into consideration.

Q. Was it your opinion that if the railroads that occupy these lands were removed from them, if there were no railroads there, that this land would be of the value you have fixed it in this schedule?

A. I couldn't say as to that, if there were no railroads there.

Q. Well, that is the proposition. Is it your opinion that, at the time you made this appraisal, if those lands had been vacant and no railroads there at all on any of this property, it would have been worth anything like the figures you have put in this schedule here?

A. Yes, I think—

Mr. HOW: Let me understand the question. Do you mean to exclude the possibility of the Omaha, Great Northern and all the railroads?

Mr. DURMENT: I mean excluding all railroads, because the witnesses have testified that they made this as one examination and one valuation for all the railroads.

Mr. HOW: So that your question merely says if there were no railroad in Duluth, whether or not this property would be just as valuable?

Mr. DURMENT: That is what I said, if there were no railroads on this property at all here, he would say it would be worth those figures in his schedule.

A. Take Duluth just as it is today, if the railroads were wiped out there, I would put those values on.

Q. If the railroads were wiped out?

A. Yes; I mean as railroads. That property is based upon a valuation without reference to railroads.

Q. Without reference to railroads?

A. Yes, sir.

Q. You have said, I believe, that these properties you valued are practically the only properties about Duluth available for terminal railroad properties?

A. I thing so. I am not a railroad engineer, but it seems so to me.

Q. And yet it is your opinion that if there were no railroad properties there, no terminals, but the terminals and railroad properties were in other places near to Duluth, the only places they could be—

A. I don't say that.

Q. Oh. Well, then, how do you adjust your mind to the fact that if there were no terminal properties there at all on this property, it would be worth this much?

A. I take the values of the properties surrounding this property at their salable values and estimate this property upon the same basis.

Q. But isn't it a fact that those properties themselves sell at these high figures, or many of them, because of the fact that these terminals are located just where they are?

A. Perhaps that is so; I don't dispute that.

Q. Then if they were not there, the values of properties around would likewise be reduced, wouldn't they?

A. Probably they would. Duluth probably wouldn't be there without the railroads.

Q. And that would necessarily reduce very largely these values of the terminal properties you have given in this schedule, wouldnt it?

A. I don't know about that. I am stating the conditions as they are there.

Q. Well, now, we are asking you to take the conditions as they would be if those terminals were not there.

A. I couldn't tell you what they would be.

Q. They might be worth half of it, or they might not be worth ten per cent?

A. I couldn't tell you.

Q. I mean so far as you know?

A. I don't know.

Q. Now, where are these 1,600 acres that the Steel Company has recently decided to build upon located?

A. Between Spirit lake and New Duluth, on the river front.

Q. That is on the river front and near the bay?

A. Yes, up the St. Louis river.

Q. And upon practically the same level as these terminal properties you speak of?

A. Yes, sir.

Q. And it is the same character of ground that a good deal of this property you have valued formerly was, isn't it?

A. I think so.

Q. And it is about how far from the Union Depot in Duluth?

A. About eight miles, I should say; seven or eight miles.

Q. And how close to the terminal properties which you valued, the extreme westerly limit of the properties which you valued?

A. Our appraisement went to 73rd avenue west, I think.

Q. I don't know enough about Duluth to know how far that is, Mr. Stryker.

A. Oh, it would be three or four miles, probably three miles, I should think; I couldn't tell you exactly.

Q. Well, in your best judgment that is approximately correct?

A. Yes, probably three miles, I should think.

Q. That is a tract of 1,600 acres you say they have bought in there?

A. Just about.

Q. How many acres in these terminal properties which you

valued here for the railroads?

A. I don't know.

Q. Nothing like 1,600 acres, is there?

A. I don't know how many acres there are.

Q. Well, was it in excess of 250 acres?

A. We didn't figure out the acres.

Q. You don't know?

A. No, sir.

Q. It may have been 1,000 acres or 250, for all you know?

A. I didn't figure out the acreage. I could in a few minutes. I should think it was nearer 1,000 than 250, but I don't know how many acres. We didn't figure that.

Q. Did you have anything to do with purchasing or selling any of this 1,600 acres to the steel company?

A. No, sir.

Q. You say you have kept a record in your office of the transfers of various properties up there?

A. Yes, sir.

Q. Do you know what was paid by the steel company for those 1,600 acres, per acre?

A. No, sir.

Q. You didn't get that?

A. No, sir; that consideration was not stated. We know a good many tracts how much was paid for them.

Q. But you don't know how much was paid for that?

A. Don't know how much was paid for the whole tract, no, sir.

Q. Have no information as to any of the prices they paid for any of that 1,600 acres?

A. No, I didn't say that; I said I did know of some, but I don't know how much they paid for the whole tract.

Q. What prices did they pay for that that you know of?

A. They paid about $1,000 an acre, or a little over that.

Q. About what?

A. Counting the water front and all, about $1,000 an acre for quite a good deal of it.

Q. And your valuations per acre on this property that you have made here would run what?

A. It varies from $1,000 to $12,500; that is on the right-of-way.

Q. And on the other properties?

A. I couldn't tell you how much it would run an acre, because I haven't figured out the acreage. I could tell you on some of it by figuring it out. We appraised some of the right-of-way of the Northern Pacific at $1,000 per acre.

Q. Where was that?

A. That is up at the western end.

Q. And from that it increased up to $12,500 per acre?

A. Yes; that is just on the right-of-way. When you asked me the question I thought that was what you meant. Now, you want me to figure out how much we made some of these per acre?

Q. Yes, not that for right-of-way but that that you valued.

A. That between First avenue east and Lake avenue would be about $45,000 an acre. Not quite that.

Q. And the other properties in there about the same price per acre?

A. No, it would be higher between Lake avenue and Fifth avenue, I think.

Q. What was that per acre?

A. I can't figure it out.

Q. Within what period has this decided advance in the price of real property in the business portion of Duluth been made?

A. It has not been a decided advance, we have had a steady advance there for the last number of years.

Q. But evidently it has been much more marked in the last six or eight months than for some time before?

A. Well, the last year and a half it has been more marked.

Q. When was it that the steel plant was decided to be built there? that is less than a year ago, isn't it?

A. I think so, yes; it was last winter.

Q. And when the Soo came in there, or undertook to come in there, was within a year, wasn't it?

A. Yes, sir, I think so.

Q. And the Wisconsin Central?

A. Well, that was longer ago than the Soo or steel plant.

Q. Now it is true, is it not, that in Duluth, at about the place where the union depot is located and these premises are, running east and west of the union depot there are practically only two business streets for Duluth; that is, Superior street and Michigan avenue?

A. First street is getting to be a business street, and there is some on Second.

Q. Not much on First?

A. Well, First street is improving all the time, there is quite a good deal of business there now.

Q. That is up on the hillside, farther than Superior street, isn't it?

A. Yes, the next one above Superior. There has a little business gone up on Second.

Q. But Superior street is the retail street of Duluth?

A. It is the main retail street.

Q. And it is all built up; that is, throughout a greater part of the length of Duluth, is it not?

A. Why, it is not built up for business purposes. Superior street is built up more or less its whole length for residences.

Q. From the union depot east, for what distance is Superior street practically built up for business purposes on both sides of the street?

A. Second avenue east is practically all business; from Second avenue to Third it is mainly business; and then there is some business between Third and Fourth, and the brewery

comes in at Fifth avenue.

Q. For how many feet from the union depot, the street that goes up the hill between the union depot and the Spaulding, is Superior street built up for business purposes east?

A. It is built to Second avenue east; that would be seven blocks. From Fifth avenue west, to Second avenue east, it is all business.

Q. How much farther east do these terminal values which you apply of the Northern Pacific extend?

A. Thirteenth avenue east, I think. I am not positive exactly, but I think that was where the appraisement began. This map will show exactly. This map shows to Thirteenth avenue west, and I think it begins at Thirteenth avenue east.

Q. Your appraisement shows right-of-way east of Thirteenth avenue west to a certain point?

A. Yes.

Q. Did you value these terminal properties at the same or higher figures than these values which you say obtained for the retail property on Superior street and adjacent to these terminal properties?

A. Valued it at a lower valuation.

Q. You considered that it would not be worth as much as the property on Superior street would bring for business purposes?

A. Oh, no, nothing like it.

Q. Why is that? Why would this be worth less than the retail property adjacent to it on Superior street or just opposite?

A. Superior street is the main business street, has the main retail trade upon it, and the prices are higher there.

Q. Then the prices of business property on the main retail streets of a city you consider would ordinarily command a higher market value than terminal railroad property?

A. Yes, sir.

Q. A considerable or only slight difference?

A. Considerable.

Q. About what difference did you make in this case at Duluth between them, or do you know?

A. The location and conditions that govern the difference in the values, in the uses.

Q. You do not understand me. Approximately how much more valuable, what percentage, you might say, of the value of the retail business property on Superior street, would the value of the terminal property, used for railroad purposes, opposite to it or adjacent to it have?

A. We did not take any percentage of it.

Q. No, but what would be your opinion upon that point, if you can form one?

A. A part of this property that we appraised is on Michigan street. We knew the values at which that property on Michigan street was selling at. This property on Michigan street is about an average of 100 feet deep. It was selling at about $500 a front foot; that was the market value on Michigan street.

Q. For any purpose?

A. It would sell generally in the market for any purpose it was wanted for, yes, sir.

Q. Was it in fact in use by the Railroad Company at that time?

A. No; that is not railroad property. I am not speaking of railroad property now, I am telling you of some of the ways in which we got at the values. Michigan street property on one side was selling at $500 a front foot, and Commerce street, on the other side of this property, was selling at $400 a front foot. Property on Fifth avenue west was readily salable at $500 a front foot. Now this property was right between those. We did not take into consideration what Superior street property was selling for, it was not necessary.

Q. Well, relatively speaking, did you fix the price of these terminal properties between Commerce street and Michigan street at higher or lower figures than the property on Commerce or Michigan street?

A. Fixed them at lower figures.

Q. How much lower? I mean approximately.

A. I think where Michigan street property was selling at $500 a front foot we put this in at $300 per front foot.

Q. That is, roughly speaking, property suitable for terminal purposes of that sort would be about two-thirds the value of the property adjacent to it suitable for business purposes?

A. We did not figure it as terminal property, we figured it as real estate.

Q. Oh, figured it as real estate?

A. Yes, sir.

Q. Just as real estate without anything on it?

A. Without anything on it.

Q. Except adjacent improvements, not railroads?

A. Yes, we figured it upon the basis of its location and its availability for general business purposes.

Q. But assuming every other condition to be there and equal railroad facilities for the business of Duluth, but not upon this particular ground?

A. Yes; as I stated before, we did not take that into consideration; we figured this as real estate as the conditions are there. Now, I cannot tell what they would be without railroads—that would be unthinkable; we would not have a city there, probably, of 100,000 inhabitants, without railroads.

Q. You figured it, then, upon the basis of the conditions being just as they are there?

A. Yes, sir, as they are.

Q. Railroads and all, but tried to eliminate from your mind any additional value to this property by reason of railroads being there?

A. That is it. No, I wouldn't say that exactly, either, because if these railroads were not there other railroads might be there.

Q. I mean without there being any railroads there.

A. I don't know anything about that. I don't know what the values would be, nobody knows what they would be. Of course, we have the lake and the shipping business; I don't know how much of a city we would have there if we had no railroads.

Q. As a matter of fact, you did what any man would have had to do, didn't you, you put what you thought was a fair value for that property with all the conditions just as they are, and you tried not to boost it because it was used for railroad property?

A. We put the values on it—

Q. Isn't that practically what you did?

A. Just state that again.

Last question read.

A. We put the fair value upon it with the conditions just as they are.

Mr. DURMENT: We do not care to offer the blue-print map, nor shall we urge, upon the hearing, any objection to this witness' testimony so far as its credibility is concerned based upon the fact that the map is not in evidence.

RE-DIRECT EXAMINATION.

By Mr. How:

Q. If there were no railroads in Duluth, you do not apprehend that the property the value of which you used to assist you in determining the value of this terminal property would be as high in value as it is now?

A. Certainly not.

Q. You have no views as to what the adjacent property the value of which you used to assist you in determining the value

of the properties which you appraised would be worth if there were no railroads in Duluth?

A. No, sir, it is impossible to make any estimate.

Q. You don't think anybody knows?

A. No, sir.

Q. You valued this terminal property and other property which you valued upon the basis of its being unimproved and upon the basis of the adjacent and surrounding property being of the value that it was at the time you made this appraisal?

A. Yes, sir.

By Mr. DURMENT:

Q. I notice here, in this list of property appraised, the Northwestern fuel dock, at $300,000. Was that the dock used by the Northwestern Fuel Company at that time?

A. I think they used part of the property. I think they used a part of the property as a retail dock, I am not positive about it. I know the machinery is down there.

Q. Were any of these other properties which you appraised at that time used by other persons, apparently as places of business for conducting their business, or other persons than the Railroad Company?

A. I cannot think of anything that was used except for railroad purposes.

Q. I mean by the Railroad.

A. By the Railroad.

Q. Of course this Northwestern Fuel dock, that was used for a private dock, was not used by the railroads?

A. No. There was some of that property on East Superior street, two or three little houses there, on ground rent; one renter pays $40 a year for it.

Q. All that you knew of personally, at the time you made the appraisal, was the Northwestern Fuel dock and these two or three little houses that you speak of?

A. Unless some of the elevators.

LESTER B. ELWOOD,

Sworn on behalf of Complainant, testified:

By Mr. How:

Q. Will you state your name, your age, your residence and your present occupation?

A. My name is Lester B. Elwood, I am 51 years old, occupation real estate and mortgage loans, residence Minneapolis, Minnesota.

Q. How long have you lived in Minneapolis?

A. Thirty-three years.

Q. How long have you been in the real estate business in Minneapolis?

A. Thirty-three years.

Q. What is and has been the character of the real estate business in which you have been engaged?

A. General real estate business of all kinds.

Q. Including buying and selling?

A. Buying and selling on my own account, on the firm's account and on commission.

Q. What opportunities have you had for acquiring information with regard to the value of real estate in Minneapolis?

A. The opportunities that would come to any real estate office in pursuit of their business, the opportunity that would come to a mortgage-loan office; in addition, I have been chairman, for a number of years and up to a year ago, of the valuation committee of the Minneapolis real estate board; for the past six years I have furnished values to the city assessor of all the business property of Minneapolis; I have had these values again submitted to me as a member of the state board of equalization. I think those cover it.

Q. What were your duties as chairman of the valuation board of the real estate exchange, if I have it right?

A. The real estate board it is called, real estate committee.

Q. The valuation committee of the real estate board of Minneapolis—what have been your duties in that regard?

A. Whenever a valuation was required of any property in Minneapolis, it has been the custom there, in recent years, to apply to the real estate board; that would be submitted to the valuation committee and they would view the property and make a written valuation and that valuation is made a part of the records of the real estate board.

Q. Have you had particular experience in your business with business properties as distinguished from residence and outlying properties of Minneapolis?

A. I have.

Q. Have you paid particular attention to properties adjoining railway properties and fit for railway purposes?

A. Yes, sir, properties known as trackage properties.

Q. Were you employed in the year 1906, with associates in Minneapolis, to make a valuation of certain railway properties within the city limits?

A. Yes, sir.

Q. Who employed you, and under what circumstances?

A. Capt. E. E. Woodman (I think those are his initials), who was then with the Omaha road, sent for me, at his office in St. Paul, and asked me if I would appraise the terminal properties of a number of railroads in Minneapolis. I think he was chairman of some railroad committee. I told him I would. He then asked me to suggest the names of several men that should act with me, I did so, and of the names I suggested he chose Mr. Barney and Mr. Ridgeway, and we three together appraised the values of the properties of, I think, some nine roads, in Minneapolis.

Q. Do you know, in general, what the experience of Mr. Barney and Mr. Ridgeway, respectively, has been of real estate business?

A. Yes, sir.

Q. Has it been large?

Mr. DURMENT: We object to that as incompetent and immaterial.

A. Yes, sir.

Q. Do you know, generally, how many years they have been in Minneapolis in the real estate business, respectively?

Mr. DURMENT: Same objection.

A. Mr. Barney has been in the real estate business, I should think, for 25 years. He is also chairman of our board of county commissioners; he is president of the East Side bank; he was also employed by the State recently as an expert in acquiring the addition to the university lands in Minneapolis. Mr. Ridgeway was in the real estate business up to a few years ago, I should say for 18 or 20 years, when he became secretary of the Minneapolis park board, largely on account of his knowledge of real estate values, as the park board are acquiring, by condemnation or otherwise, continually, tracts of land in Minneapolis. It was for that reason that I suggested his name.

Q. You did appraise the properties within the city limits of Minneapolis belonging to the Northern Pacific Railway Company at that time, did you?

A. Yes, sir, as per plats furnished us; I assume it was all railroad property.

Q. Will you state how long it took you to make this appraisal, from the time you were employed to the time you furnished your report?

A. About six weeks.

Q. Will you state your method of procedure in making the valuation?

A. We were furnished with plats or blue-prints, by Mr. Woodman, of all the roads. The Northern Pacific, if I recall, had several plats; the other roads only had one, possibly. We met at the office of the park board and would take, for one day's or night's work, one of the plats and would mark out the prop-

erty and the next day would inspect it. We then subdivided the property as shown on the different plats, attempting to so subdivide as to have the districts set apart of equal value; we then put on each district which we had subdivided the valuation of so much per square foot.

Q. Which you considered an average value for the district?

A. For that district, yes, sir.

Q. And as I understand it, the districts were so divided as to include property of similar value?

A. Similar or equal values.

Q. Did you make, sign and transmit, a report showing your valuation of the Northern Pacific properties?

A. Yes, sir.

Q. Was it signed by all three of the appraisers?

A. Yes, sir.

Q. State whether or not, when so transmitted, the report was the joint opinion of those three appraisers.

Objected to as immaterial and incompetent.

A. It was.

Q. I show you Complainant's Exhibit 22—Elwood, and ask you what that is.

A. This is the written report made by myself and my two associates of the value of the property of the Northern Pacific and other railroads.

Q. That is the original report?

A. Yes, sir.

Q. Those signatures are whose?

A. Mr. Ridgeway's, Mr. Barney's and my own.

Mr. HOW: I offer it in evidence.

Mr. DURMENT: We object to it as incompetent, immaterial and no sufficient foundation laid. In the first place, it puts into this case the opinion of other men and testimony of two other men as to values who are not here and we have no opportunity to cross-examine or to know what they have to say about

it. In the next place, it is not the proper way to prove value, and it is incompetent without the production of the plat. In addition to that, I think it appears upon the face of it that it includes considerable property the title to which does not stand in the Northern Pacific Railway Company, but in other corporations which it controls.

Mr. How: I propose to exhibit the plats, but I hope counsel will not insist upon my putting them into the record, because I think they will be of no use to anybody except perhaps to assist counsel in cross-examination.

Mr. DURMENT: Unless we consider that they are of material advantage to us in some way we shall not insist upon their doing so.

The MASTER: Objection noted. Proceed.

Q. What considerations did you bear in mind in making the respective valuations shown in this report, Complainant's Exhibit 22—Elwood? What I want to get at is this: Did you consider the enhanced price which a railway company would have to pay in the purchase of the property, did you consider any buildings or improvements upon the property, or did you value it merely as real estate and upon the basis of its fair market value?

A. We appraised it as real estate, upon the basis of its market value.

Q. Without reference to improvements?

A. Without reference to any improvements on the property.

Q. And without reference to the enhanced price which you probably know a railroad corporation has to pay if it wants to get property?

A. Without reference to that fact, yes, sir.

Q. Did you take into consideration any recent transfers of property and the consideration given therefor adjacent to any of this property which you appraised, if there were any such?

A. That was one of the factors used by us to base our opin-

ion upon—the sales of property and the asking price of property adjacent to these roads.

Q. This report was made, I take it, in the latter part of the year 1906? It is not dated.

A. It was in the winter of 1906.

Q. And, therefore, either in the latter part of 1906 or early in 1907?

A. Yes, sir.

Q. Have you any judgment as to whether or not a valuation as of the present time would be higher or lower, or equal to that contained in this report?

A. Yes, sir.

Q. What is that judgment?

Objected to as incompetent and immaterial.

A. The values are higher at this date than at the date we made these appraisals.

Q. What can you say with regard to the moderation of the values contained in that report at the time they were made, whether they were moderate valuations or excessive valuations, in your opinion?

A. They were fair, moderate valuations; fair valuations as nearly as we could arrive at it.

Q. How much higher do you think the valuations would be put, if made to-day, on an average?

Same objection.

A. As I stated before, our valuations were based on the sales of property in the immediate vicinity of these different tracts, on the prices of property in the same vicinity as listed with us as real estate agents, on the records of our loan books where we were making loans. All those properties, which formed largely the basis of our valuation, have appreciated in value, I should say ten per cent, from that date to this. That being the basis, naturally these values would be, if appraised to-day, some ten per cent higher if I were making the appraisement.

Q. Do you know of any transfers of adjacent or similar property made since you made this appraisal which you think justify you in that opinion?

A. I cannot recall now any particular transfers or sales. As bearing out my statement, however, I would say that I have been employed within the past sixty days to see at what prices a certain tract of land could be purchased adjacent to some of this property. I refer to a tract bounded on the south by Eighth avenue northeast, on the west by the river, and I think on the north by about Fourteenth avenue northeast; I can not tell without my plat. I obtained the prices, as nearly as I could, without exciting suspicion of the different property owners, and I think, without exception, those prices were higher than our books showed properties were held when this valuation was made and higher than the valuations that I placed on this particular property in this vicinity. For instance, I think this report will show that we appraised property per square foot from Eighth avenue northeast to Fourteenth avenue northeast at thirty cents per square foot. Lots in that locality are full quarter-acre lots except the alley, about 10,000 square feet. The prices that I obtained from the different property owners ranged from $3,500 to $5,000 each. Ex-mayor Pratt owns two lots in that vicinity, and I could not get any better figure than $5,000 each, which would be about fifty cents per square foot. A lumberman named How, on the river bank wanted $4,500 per lot. And from those figures down. I don't think there was a lot I could have bought for less than $3,000 a lot. The negotiations are still pending and no purchases have been made; whether they will or not I don't know. I cannot recall any other transactions.

Q. Are those prices higher than the values of that property as you considered then in 1906-7?—winter?

A. Yes, sir; there has been an appreciation. There has been a general appreciation all over the city in certain localities

greater than the figures I have named. In some localities, no appreciation whatever. In some instances, on Nicollet avenue, property is fifteen or twenty per cent higher than it was two years ago.

Q. I think Mr. Cooper testified that when he received the respective reports of these respective committees in St. Paul, Minneapolis and Duluth, he agreed with the valuations made by the respective committees and did not change the figures at all but incorporated them in his general valuation, excepting that in some instances he lessened the valuations. Do you know what the fact is with regard to the Minneapolis properties which you were engaged in valuing?

Mr. DURMENT: I submit that it is incompetent, immaterial and calling for a conclusion. If that be true, the only legal way to prove it is by submitting Mr. Cooper's valuations and Mr. Elwood's report.

A. I do not know what Mr. Cooper reported as to values, but I recall his stating—

Mr. DURMENT: We object to the statement made by Mr. Cooper.

WITNESS: —stating in his report—to whatever body it was he reported to—that he had used my figures, or the figures of our committee; but in some instances he did mark them down. That is my recollection of the conversation I had with him in relation to it. That is all I know about it.

Recess until 2 P. M.

AFTERNOON SESSION.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. Mr. Elwood, at the time you gentlemen were requested to make this valuation, you were furnished plats on which were marked the properties you were asked to value, were you not?

A. Yes, sir.

Q. Those different properties, as indicated upon those plats, were marked in some way into subdivisions, were they not?

A. I don't know as I understand you, Senator. The Northern Pacific furnished us—

Q. Well, I will confine myself to that. On those plats the Northern Pacific properties were all marked in some color?

A. Yes.

Q. To indicate what properties were Northern Pacific properties?

A. Yes, sir.

Q. I believe that color was yellow, was it not?

A. Oh, I don't recall; the plats will show.

Q. Is it not true, also, that the various properties bearing the color representing the Northern Pacific, were in some way subdivided by marks, and different tracts numbered or lettered?

A. If I remember rightly, they furnished us about seven or eight blue-prints, and those blue-prints each had different numbers; then there was one main plat (a plat of Minneapolis) which would show the section that each number applied to.

Q. I find here before me, produced as plats used by you in making these valuations, a plat marked on the back "Minneapolis A", and I find there what is marked as Tract No. 2, and what is marked as Tract No. 1 on this map. Now, were those tracts marked in that way when the blue-print was furnished you?

A. I don't recall, Senator, whether they were or not. If they were, we paid no attention to them. We subdivided these tracts as to us seemed fit as to value; we paid no attention, if these notations were on them (I doubt if they were there) we paid no attention to them whatever.

Q. You made your own subdivisions?

A. Yes, sir.

Q. And in that way arrived at your own valuations?

A. Yes, sir.

Q. Well, when you came to report, you made your report according to the tracts as they are marked upon these blue prints, did you not?

A. No, sir, we did not so report. We said land between such and such streets. There may be one or two instances where we said "As per plat" where it was difficult to describe, but in most instances you will see our report simply said value of property per square foot between such and such streets, irrespective of the plat.

Q. Then I assume from your answer that, where you have put, for instance, on this Exhibit 22—Elwood, plat 1, between Marshall, University avenue, Oak street and 26th Ave. S. E., also shown on plat 3, 30 cents per square foot, you made your valuation of 30 cents per square foot upon that property?

A. Yes, sir.

Q. Not taking into account the other property at all?

A. No, sir.

Q. And that with this item between 26th Ave. S. E. and city limits, 25 cents per square foot, you made up your estimate of the valuation of that upon that property alone?

A. Yes, sir.

Q. Without taking into account the property in the other subdivisions?

A. Yes, sir.

Q. And those are subdivisions made by you and your fellow committeemen?

A. Yes, sir.

Q. You made those subdivisions, I understood you to say, because, in a general way the properties which you considered together and arrived at the average price per square foot were, in respect to character, location and surroundings, somewhat similar?

A. Yes, practically equal.

Q. Now, for instance, when you had decided between yourselves that this piece here between 26th Ave. S. E. and city limits should constitute one division because all the railroad property within those limits was practically equal or similar as to condition and character, you then, I suppose, proceeded to find what you would consider the value of that property?

A. Yes, sir.

Q. You first examined it generally so as to determine that it was on an equality,—sufficiently so, at least, as to have it considered together?

A. Yes, sir.

Q. And, having fixed that fact and the district, you then took steps to place the value on it?

A. Yes, sir.

Q. As I understand it, these two districts or divisions that I have called your attention to on Exhibit 22—Elwood, or under the head "Plat 1" in that exhibit, are shown on this map "Minneapolis Plat A"?

A. Yes, sir.

Q. And the first description I called attention to there, between Marshall avenue, University avenue, Oak street and 26th Ave. S. E. is that which is marked Tract 2, is it not?

A. Yes, it is,—30 cents. Senator, I might state now that I am positive that these figures were not on there, because when these plats were furnished us they had no knowledge of these values. The Railroad Company must have marked on there after they got our report, otherwise they wouldn't be there.

Q. My question, however, had reference to the railroad properties.

A. This is in answer to your first question whether or not those figures were on there when the maps were furnished. I am positive now they were not.

Q. I didn't mean to ask that question, but what I meant to ask at the time you referred to, was as to whether these were

marked Tract 1 and Tract 2.

A. They were not.

Q. And the other description on the Exhibit 22—Elwood, "between 26th Ave. S. E. and city limits" is that which is marked "Tract 1" on this Minneapolis Plat A?

A. Yes, sir.

Q. Now, I notice on that plat (taking first, plat 1) that there is represented on it what appears to be the railroad properties, colored yellow or green, a long strip; those are the railroad properties, are they not?

A. Yes, sir.

Q. And I notice drawn about that, with red lines, an enclosure enclosing not only that railway property but other property contiguous to it. Were those red lines drawn on there by your committee, or were they there when you received the plat?

A. They were not drawn by our committee. We drew no lines or made no notations whatever on the plats furnished to us. What may have been added since we had them, I am unable to state.

Q. Were those red lines on the plat when they were presented to you?

A. Why, I assume they were, Senator.

Q. Well, do you remember?

A. I cannot remember, no, sir. We had a great many plats furnished us.

Q. Then so far as your memory goes, the red lines on this plat or map, had no significance in the valuation of the property made by you and your committee?

A. No, sir, they would not, for this reason: that if we appraised this property at a certain figure per square foot, we would have appraised the other property, if these lines were not here, at the same figure. It is all the same value.

Q. You would have done that, you say?

A. Yes, sir.

Q. Well, what I want to get at is this: Did you, in making your appraisal of the values of the railroad properties, do it with reference to the properties within the red lines marked here showing tract 1 and tract 2, or do you remember?

A. If the red lines were there we did so appraise it. I am rather of the impression that they were there; I can't recall. We were furnished plats by different roads showing the property, enclosed in red or other lines, owned by the different roads, and we so appraised the property. Now, whether there have been other lines put on there since we had the maps, I am unable at this time to say.

Q. And you can't at this time tell what lines were on the maps when you got them?

A. No, sir, I can't.

Q. Then at this time you don't know whether you were asked by the Railroad Company to appraise all the property within what is in red lines and what is marked Tract No. 1 or not?

A. If the lines were there we were asked to appraise it all. If they were not there, we were only asked to appraise what was there. In other words, our report shows that all the property owned by the Northern Pacific railroad, as shown on the plats furnished us between certain avenues, had a certain value. It is almost too much to ask what lines were on all these plats a year ago, I mean it is too much to answer.

Q. What I want to get at is this: At this time, looking at this map which was before you when you made your appraisal, which is marked Tract No. 1, you can't say whether you appraised as Tract No. 1 all the property within the red lines, or only the property which is colored green or yellow within those red lines?

A. Not being able to remember what lines were on there, I of course could not answer that; I can only say that we appraised all the property on the different maps as shown en-

closed in the lines then on the plats. What may have been put on since I can't say.

Q. Then, so far as you know at this time, you may have placed a valuation of 25 cents a square foot upon every foot of land within the red lines which enclose what is marked Tract No. 1?

A. Yes, sir.

Q. Or, so far as you know now, your appraisal of 25 cents a square foot may have been confined only to that strip of land lying within the red lines enclosing Tract No. 1 which is marked yellow or green?

A. Yes, sir.

The MASTER: Your report does not refer to property by metes and bounds or lots and blocks, but with reference to the property located between streets, as so much per foot?

WITNESS: So much per foot, yes, sir.

Mr. DURMENT: His report refers to railroad property between those streets.

The MASTER: I know, but doesn't his report locate the property?

Mr. DURMENT: Yes, so far as is shown by maps.

The MASTER: When it says from Third Ave. N., to Basset's Creek, $2.50 per square foot, that refers to such railroad property as was pointed out to you in some way?

WITNESS: Yes, sir.

The MASTER: For the purpose of your making a valuation on the same?

WITNESS: Yes, sir.

The MASTER: But just what that property was you can't now state?

WITNESS: I can't now state, except that it was the property of that certain road located between those streets, and that road is still there according to that plat, you see. That was verified, your Honor, by our visiting the property, and it is the same

property that is there now.

Q. Now, assuming that your valuation of Tract No. 1 was of all the property enclosed in the red line upon this Plat A Minneapolis, marked No. 1, what consideration, if any, did you give as to the values of the property lying without that red line?

A. We gave no consideration to that value except to ascertain, as far as we could, its actual value to base our value on the property that we did appraise. We did not appraise any property around, we simply appraised the railroad property shown on the lines.

Q. No, of course you didn't make any report of an appraisal, but what investigation did you make as to the values of the property adjacent to the tracts you did appraise? What special investigation, if any?

A. Taking this particular piece, we had Mr. Barney (who has for sale a large amount of property, he is an East Side agent) show us what property he had for sale and what property he had sold. In my case, I doubt if I had anything on my books that would show what that property was listed at, but I had to inform myself after getting Mr. Barney's statement, and Mr. Ridgeway's.

Q. Did you make up a list of properties lying adjacent to the property in Tract 1 which you were required to value, which had been sold within a particular previous period and the prices at which it had been sold?

A. We made no such list, no, sir.

Q. Did you make any investigation as to any such previous sales of property adjacent, except to inquire among yourselves as to what you had sold property for or what property was held at which you controlled?

A. We did in a number of cases; I cannot tell whether we did in this particular case. Where we very often disagreed we would adjourn, and each of us make inquiries as to sales and

the value, until we were satisfied in our own mind of what the value was.

Q. Now, take on this plat A, referred to in Tract 1, I find here at the extreme southwest corner of that tract, as marked by the red lines, what appears to be lot 5 in block 13, 66 feet by 165 feet. What was the market value of that lot at the time this appraisal was made?

A. I should say somewhere in the neighborhood of the values we placed on the property.

Q. But in dollars and cents?

A. I am not prepared to state the value of individual lots in any part of Minneapolis, and no other man can do that without investigation. I couldn't pick out any one lot in Minneapolis and give you the market value of it without some investigation. If you were to ask me the value I should first want an opportunity to look it up and advise you.

Q. You couldn't do that now?

A. No.

Q. Did you investigate as to the value and make up your mind as to the value of that lot at that time?

A. I doubt if we did, that particular lot. We may or we may not.

Q. Then you didn't value each piece of property separately along any one side of the railroad property marked in any tract?

A. Oh, no, not each piece. We couldn't have done that in five years. We couldn't have taken each lot, each separate subdivision. We got the general opinion, the general concensus of opinion of the values, not each individual ownership.

Q. Did you make any inquiry or examination as to the value fixed upon properties adjacent to these various railroad properties for assessment purposes?

A. No, sir.

Q. By the assessor?

A. No, sir, I did not. My work is entirely within the limits I told you, in the central part of Minneapolis. I have been consulted on different sections by the assessor, but I do not think I have ever been consulted on any of this property on the East Side.

Q. No, that isn't the point, but in making your valuation of 25 cents a foot here, did you gentlemen inquire as to what the property adjacent to the property valued was assessed at?

A. No, sir.

Q. The valuation of the assessor?

A. No, sir, not to my knowledge.

Q. You didn't take that into account at all?

A. No, sir. I might add, Mr. Durment, that our judgment that we finally arrived at was cumulative (you might express it that way). We had all these different roads, and we marked them, and we afterwards got our plats together and the information that we found that would guide us in appraising the Great Northern property or the Omaha property or the Wisconsin Central helped us in appraising other properties. In other words, we might have been able to give what we thought was a fair and intelligent valuation of this particular tract from the information we got in looking up these other tracts.

Q. Now, will you please explain to us how it is that the information you would get in looking up the Omaha tract and the Great Northern tract at a different point would aid you in fixing a value upon this tract No. 1 of the Northern Pacific?

A. It was in the same section, not at different points. Here is property within a quarter of a mile, flat prairie country, with nothing particularly to distinguish one piece from another, as far as value was concerned, and the value of one tract can be very largely made up from the information you have of an adjoining tract of similar value.

Q. Then the character of the adjacent property would cut no figure in your valuation?

A. Oh, certainly, if it was different, but in this case it was not different. This is a flat country.

Q. The same improvements and the same sort of purposes or same use of the properties with reference to the Northern Pacific, adjacent to the Northern Pacific as is adjacent to the Omaha and the others?

A. It is substantially the same in that district. It is all very flat there.

Q. The fact that there were railroads there, what influence or what consideration, if any, was that given by your committee in arriving at the value you fixed?

A. That answer will apply to all the valuations that we made. The basis of all realty values, in my opinion, is the use it can be put to. If you add to the uses that a piece of property is available for or adaptable to, some other purpose, it adds that much to its value. The fact that that property can be used, and is used, for railroad property, is an added factor of value, it adds to it. If it can be used for retail or wholesale or warehouse, each time you find an added use for property it gives you a better basis for adding to its value, a basis to add. Now, the fact that this can be used did add to it.

Q. Now, how much was added to your valuation there by the fact that that property could be used for railway purposes?

A. Oh, it would be hard to determine. That was one of the factors. A certain percentage.

Q. Well, what percentage would you say?

A. Oh, in that particular case I should say possibly fifteen per cent, possibly more. It is difficult to tell.

Q. Then in other cases it might add more or less?

A. It might add more or less.

Q. Take all the Northern Pacific properties, as you put them through there, what would be your opinion of the value added to the property by the fact that it could be used for railroad purposes? If you can't fix an average, perhaps you can

get at it in different sections.

A. Oh, it is largely speculative. I should say at least ten per cent. If I had a tract of property that was available for railroad purposes and I knew the railroad might want it, I should consider it of more value and it would be considered more valuable. Just how much, it is difficult to say.

Q. But in making your values you considered that here?

A. That is one of our factors of value in our making of value. The fact that it could be used for that adds to its value and we took that into account.

Q. But you didn't add anything above that because of the fact that a railroad actually existed?

A. No, sir. I might add this: that in appraising a strip of property that went through a tract—diagonally through—that it added more value per square foot possibly than if it was a wider tract and took a lot in its entirety. We took that into account, largely.

Q. That is to say, that where the running of this railroad through a subdivided tract according to the plat, a lot or block—

A. Yes, sir.

Q. —was such as to take a part of it and leave the balance, you allowed for the damage to the other or the added cost?

A. Well, not in particular cases, but in general.

Q. I mean in general.

A. A tract of land that can be used for a certain purpose and is acquired, and in its acquirement you had to ruin certain other property, has a certain value for that purpose that it wouldn't otherwise have.

Q. Yes, that is to say, that taking it at the square-foot price, it would cost more per square foot, or you would value it more per square foot than if you take the entire tract?

A. Yes, sir, certainly.

Q. That would be because the price would be increased by

reason of the destruction or diminution of the value of the adjacent piece?

A. Yes, sir, that is one factor. There are a dozen factors that enter into the value of property.

Q. And we might perhaps properly speak of that as a severance damage, I suppose. Now, then, what other elements or features did you take into consideration?

A. I think that covers it all.

Q. I suppose that the value of the railroad property as you fixed it was also influenced in a measure by the market value of the property adjacent which was not used for railroad purposes?

A. Yes, sir.

Q. And I suppose that you took those values as they existed at the time you made the appraisal under the conditions at that time?

A. Yes, sir.

Q. Those values, of course, were higher for the adjacent property, probably, than they would have been if there had been no railroad near there?

A. In some instances yes and in some no. There might be some tracts there that were left in such shape that it would be of less value than if the railroad had not gone in there.

Q. But, as a general rule, they were of greater value?

A. Yes, sir; it adds the other factor that they can be used for what we call trackage property.

Q. Now, you didn't consider (or did you consider) in fixing the value of this, improvements that would have been upon the property in case it hadn't been used for railroad purposes?

A. No, sir.

Q. Nor any improvements that were actually upon the property?

A. No, sir.

Q. What you have testified with reference to this matter

where I have spoken of tract No. 1 is substantially true as to all the other tracts?

A. Yes, sir.

Q. The prices which you fixed per square foot upon these railroad properties, do you know, were the same, or greater or less, than the values which you gave to the properties adjacent thereto?

A. We didn't give any values to the properties adjacent.

Q. My question is misleading. You did take into consideration what you found or considered to be the market values of properties adjacent to these railroad tracts which you placed a valuation on?

A. Yes, sir.

Q. Now, in general in this appraisal you made, was the price per square foot which you fixed for the railroad properties greater or less than the value per square foot of the adjacent tracts?

A. Greater.

Q. How much greater?

A. Oh, a small percentage, for the reason that I noted. I wouldn't undertake to say, but possibly ten, fifteen or twenty per cent.

Q. Now, it is true, is it not, that in estimating the value of adjacent properties per square foot you would take the value of the lot and divide it by the number of square feet within the lot lines.

A. Yes, sir.

Q. Is it not true that the increased value—I mean that the value of property of that kind depends very much upon its accessibility to the street?

A. It does in all cases, except where it is used for this purpose. Used for this purpose, it would be of no added value whether it had access to the streets or not.

Q. But for the other property—outside property which is

not used for railroad purposes—the value per square foot of the property is increased appreciably, at least, if not to a very considerable extent, by reason of the fact that it has a frontage upon the street?

A. Certainly.

Q. Or an alley?

A. Certainly.

Q. That is to say, there is included in that the benefits or use of the street and alley for the purposes for which that lot can have the use of it?

A. A piece of property that you can't have access to (and you can't have access to it unless you have streets or alleys) is of but nominal value, unless for use such as this property is used for. They do not need streets or alleys.

Mr. DURMENT: I think we will offer, as a part of the cross-examination, this Minneapolis map A.

Marked for identification "Defts'. Ex. N—Elwood."

WITNESS: Your Honor, and Mr. Durment, I am quite positive, if it is at all material, that the property that we appraised on those different maps was the property shown on the inner marks and not included in those outside red marks, for this reason (I had not examined the plats except one or two) but I think in almost every case the number of square feet was shown on the plat or the blue-print when we appraised it, and if it is shown that the number of square feet only is the part that shows the right-of-way, why then that is the only part we appraised.

Q. I think there is no question that that is true, Mr. Elwood, and the purpose of my examination was to show that your mind was rather hazy on what you did do, that was all.

A. Well, that is a matter of judgment. You can't examine fifty or sixty plats, and a year and a half afterwards on the witness-stand tell what marks were on that plat and what were

not. You couldn't do it, nor anyone else in this room, whether it is hazy or not.

Q. I dont think there is any question but what you simply appraised that in the yellow.

A. I think so, but the other marks were put on afterwards defining the tracts.

RE-DIRECT EXAMINATION,

By Mr. HOW:

Q. Mr. Elwood, do you wish to be understood as assenting to Mr. Durment's statement that you took into account, in establishing your estimate of the values of the Northern Pacific properties, a severance damage, so-called, in acquiring the property?

A. I do not know as I know the meaning of the word "severance" as applied in this case.

Mr. DURMENT: Well, I will concede that the witness didn't say severance damage.

WITNESS: I don't know that I have ever heard the term. I have no knowledge of the meaning of the term as applied.

Q. Let us suppose that the right-of-way, the portion of which you examined, goes diagonally through a platted block; did you take into consideration and add to the valuation (ordinary market valuation) of the right-of-way, the damage caused to an adjoining owner, that is, to the property which was left to an adjoining owner, and not taken by the Railroad Company?

A. No, sir, I did not take that into account. How I wish to be understood is the fact that a tract goes through a block like that, for the purpose that it is used, was undoubtedly appraised by us at a higher per-square-foot valuation than we would have appraised the adjoining property that adjoined that same tract. For the purpose that it is used it would cost more to acquire it, and was worth more per square foot, in our opinion, than otherwise. That was the meaning I intended to convey.

Q. Have you had any subsequent corroboration of the fairness of your valuation since this report was made in the winter of 1906-7?

Mr. DURMENT: We object to that as not re-direct and as incompetent and immaterial.

The MASTER: Objection noted.

A. Only as I have heretofore stated on the direct examination. I think I stated that I had been employed to purchase property and I found that it was held at higher prices and could not be purchased at as low figures as we had placed on the property adjacent.

Q. Have you had any experience with regard to property similar to this, or adjacent to this in plat A, or have you had any subsequent information in regard to it?

A. No; but in answer to your question I might also state this, that on one of those plats is shown the property located between Third Avenue North, and I think Plymouth avenue, between Washington and the river, which is the highest valuation we placed on any of the Northern Pacific property. That we appraised at $3 per square foot. I have since learned—for that matter we may have learned it at the time—that that property on First Street is now held and sold at $400 per front foot. That property is about 125 feet deep. It is warehouse property, which lies between this Northern Pacific property and the Omaha property. At that rate per front foot, it would be more per square foot than the highest value we placed on any of the Northern Pacific property, which was $3 per square foot.

Q. And that is property similarly situated t. this?

A. Yes, sir; it is called warehouse property.

Q. What is your opinion in regard to its comparative value with the highest valued property in your report?

Mr. DURMENT: That is objected to as incompetent and immaterial.

A. It is worth no more, nor quite as much, as this property

in our report, because this property in our report lies between the major part of the city and it. You have to cross it to get to it. It will therefore be valued more. It is nearer Washington avenue.

Q. Now, even if it be conceded that your recollection of some of these many details is not to-day exact, are you able to declare that the work of valuation, at the time it was made, was done with great care and with great conscientiousness?

Mr. DURMENT: That is objected to as incompetent and immaterial.

The MASTER: Answer.

A. It was done with great care, and my memory is not indistinct or hazy as to what we were doing. It was hazy or indistinct as to the lines placed on there by the engineer who gave us those plats, which we paid no attention to and did not care.

Q. I do not subscribe to the supposition that your memory is hazy, but I want to be sure that even if it be claimed that it is, the work was done with great care and great conscientiousness at the time.

A. It was intended so to be done.

Q. And I will ask you whether or not you were influenced in any way by anybody's desire to have as high a valuation as possible, or whether you put a fair valuation to the best of your judgment.

A. There was no hint nor no intimation, from any party or parties, as to whether they wanted a high or a low valuation. We were asked to put what we considered was a fair valuation on the property. I had no consultation with anybody, nor any railroad official, except Capt. Woodman, who furnished me the plats.

RE-CROSS EXAMINATION,

By Mr. DURMENT:

Q. This piece of property that sold within the last year, or

is held within the last year, at $400 per front foot, which would make $4 a square foot you said.

A. No, it would make something over $3 a foot. 100 feet deep would be $4.

Q. Then between three and four dollars a front foot?

A. Yes, sir.

Q. That lies between the Omaha road and what other road?

A. This property I speak of is on First street between Third Avenue North and 6th Avenue North. The Northern Pacific property lies between First street and Second street, nearer Washington.

Q. I am speaking now with reference to this property that you speak of, the warehouse property, worth between three and four dollars per foot.

A. Yes, sir.

Q. Does that have a frontage on any railroad?

A. It has trackage on the Omaha. I will answer your first question: It does lie between the Omaha property and the Northern Pacific property. The Omaha property is east of it, and we appraised the Omaha property at $2.50 per square foot because it was a little farther that way. This is midway between the $3 and $2.50.

Q. How far from the Northern Pacific railroad is this warehouse property?

A. On the same street, but I think the grade is different so that they only use the Omaha trackage. They do not use the Northern Pacific.

Q. But it has access to the Northern Pacific track, would have trackage for that?

A. I rather think not. I think there is a wall there. The Northern Pacific property is used as their terminal yards and is not used for trackage property. The Omaha has a spur that runs back of this warehouse and is used. It is trackage property.

Q. Of course, the value of this property is due largely to the fact that it is adjacent to a railroad or within a short distance of a railroad?

A. Certainly; it has its value because it is trackage property. It has no value as residence or retail or wholesale—it might as wholesale, but not as retail. It is not a shopping street.

By Mr. HOW:

Q. As a general proposition, do you consider that as soon as a railway is established (as the Omaha railroad is established) next to this property in Minneapolis, the property loses whatever of value it ever had for residence purposes or for retail purposes and takes on a value for trackage purposes?

A. Yes, sir.

By Mr. DURMENT:

Q. And that property always, or nearly always, is of much greater market value than formely?

A. No, sir, that would not be true if it were retail property and was taken as retail property so that it couldn't be used for that purpose and made trackage property. It might be of less value. Trackage property on Nicollet avenue wouldn't be worth as much as retail property.

Q. Then the highest priced property, ordinarily, in cities like St. Paul or Minneapolis, is for retail business?

A. It is what we call ladies' retail, a street where ladies shop. It is so in any city in the Union.

Q. How about the wholesale or jobbing?

A. It isn't as high as retail property, never is.

Q. Is it as high, ordinarily, as trackage property?

A. Very often wholesale jobbing property and trackage property are synonymous terms. It is used together. The most valuable wholesale property is that which can be used for both wholesale property and with trackage at the rear for shipments.

Q. And that which can't have trackage is not so valuable?

A. Is not as valuable unless it is more centrally located; then it might be more valuable.

JOHN J. WATSON,

sworn on behalf of the Complainant, testified:

By Mr. How:

Q. Will you state your name, your age, and your present residence, Mr. Watson?

A. John J. Watson, age 58, residence St. Paul.

Q. How long have you lived in St. Paul?

A. Thirty-three years.

Q. What is your present occupation?

A. Real estate and mortgage-loan agent and broker.

Q. How long have you been in that business?

A. About thirty years.

Q. In St. Paul?

A. In St. Paul.

Q. And what has been the general character of your real estate business?

A. Well, it has been general in its scope. I have handled all classes of property, inside property and railroad property and residence property, acreage property, platted, and so on and so forth.

Q. Have you had any special opportunities for becoming acquainted with the value of railroad properties in the city of St. Paul?

A. Yes.

Q. Will you describe the city of St. Paul, so far as its topographical features are concerned, and with regard to its facilities for railway terminal transportation?

A. The railway terminal property in St. Paul is practically limited to the plateau within the amphitheatre that is adjacent to the river front inside of Dayton's bluff.

Q. What method of access is there to St. Paul from the west?

A. From the west it is very largely through the Trout brook and Phalen creek valleys, as well as the valleys of the Minnesota and the Mississippi.

Q. That is, the routes now traversed by the Great Northern, on the one hand, and the Chicago, Milwaukee & St. Paul, on the other?

A. And the Omaha and Burlington.

Q. Well, they go over the Great Northern tracks?

A. Between St. Paul and Minneapolis.

Q. I mean access to St. Paul. Are you familiar with the location of the terminal trackage within the city limits of St. Paul used by the several railroads, on the westerly bank of the river especially? I mean apart from West St. Paul.

A. That would be on the east bank of the Mississippi. It is, here, really the northerly side of the river.

Q. Yes.

A. I am.

Q. Can you state, from your knowledge of the situation and location of such tracts, whether or not the area is restricted in amount, or is ample for all railway purposes?

A. I should consider it extremely restricted.

Q. Have you yourself been engaged, in recent years, in the acquisition, for railway purposes, of property in St. Paul?

A. I have.

Q. And in what district in St. Paul?

A. More particularly from the northern city limits to Seventh street, through the Trout brook valley and the plateau adjacent to it.

Q. How does the property in that district stand with regard to its proportionate value with other railway properties within the city limits of St. Paul? Is it of a high or low value?

A. It is of lower value than the property lying adjacent to

the river where the principal railway terminals are located.

Q. And higher, I assume, than property in the outskirts and suburbs of the city?

A. Yes.

Q. Were you employed, late in 1906, with William C. Read and Oscar L. Taylor as your associates, to make a valuation of railway properties within the city of St. Paul?

A. For the railroad companies?

Q. Yes.

A. I was.

Q. Who employed you, and under what circumstances?

A. Why, I was employed by a committee of railroad officials. We were asked to meet a committee of officials from several railroad companies, and were authorized by that committee to make the valuation.

Q. Did you engage upon that work?

A. We did.

Q. How long did it take you?

A. Well, the length of time I can't remember exactly, but we devoted—that is, we had meetings, sometimes several days apart, but I think it covered about ten days of actual work.

Q. What method of procedure did you adopt for the performance of the work?

A. We were furnished with plats of the property of the several roads, and we took up the roads, one after the other, and appraised their properties. We made our beginning with the property of the Union Depot Company, so-called, beginning with its station at Sibley street.

Q. Then how did you proceed in order to make a valuation of the property of the Northern Pacific Railway Company?

A. We took its plats and started with the property at Broadway, between Prince and Fourth streets.

Q. How did you determine the value of that property?

A. We agreed upon the valuation of the property between

Broadway and Pine as one section; that is, we divided the property up into districts. That was the first district.

Q. That is what I am trying to get at.

A. Yes.

Q. And that is the property between Broadway and—

A. My recollection is it was Broadway and Pine.

Q. Perhaps you can tell by looking at your report.

A. I have a copy of my report in my pocket.

Q. How large is that district, how many blocks does it run in length?

A. As I recollect, it is only one block.

Q. Then you proceeded with other districts?

A. The next district was from Pine to Willius street.

Q. You divided this property into districts from Broadway clear out to Minneapolis avenue, did you not?

A. Yes.

Q. Can you state how many districts there were in all?

A. This report takes in both lines, the Duluth line as well as the—

Q. Yes, that is true, but how many districts were there in all?

A. We took the plats and marked them ourselves, I think.

Q. How did you determine upon the boundaries of any one district?

A. Well, we wanted to appraise the property in one district that would be relatively of the same value or approximately so.

Q. And you made the districts so that property of the same, or nearly the same value, would be within the same district?

A. Property of the same general character and value would be in a district by itself.

Q. How much in detail did you consider the tracts of these various districts in making up your valuations? Did you take up separate tracts in separate districts, separately, or did you consider the district as a whole, to begin with?

A. No, any property in the same district,—some of it might have a greater value than other portions of it, but we agreed upon an average valuation for the property in each district.

Q. Taking, for instance, that property in Bass' Garden Lots north of Maryland, and to Courtland street, ten cents per square foot, did you mean to say by that that each square foot in that district was worth ten cents or that that was a fair average value for all the property in the district?

A. A fair average value for all of it.

Q. How much of this property did you make a personal inspection of during the time that this work was going on?

A. Not a great deal of it.

Q. And why did you not?

A. Well, because we were all of us familiar with the property.

Q. Have you, in your business as a real estate dealer and broker, kept familiar with the market values of property throughout the city of St. Paul?

A. Reasonably so.

Q. Were there any recent transfers, or asking or selling prices, by willing sellers or purchasers, as the case might be, of property similarly situated to any of this property, which gave you assistance in determining values at the time?

A. Not a great deal of that. There had been very little in the way of actual transfers of property adjacent to these Northern Pacific properties, with the exception of the purchases I myself had made for the Soo road.

Q. Did you take them into consideration in fixing these values?

A. We did, to a certain extent.

Q. The report was finally made and signed by you and your associates and transmitted, I take it,—

A. Yes, sir.

Q. —to the several railway companies by whom you were employed?

A. Yes, sir.

Q. Was it, when so transmitted, the joint opinion of yourself and associates as to the reasonable value of the properties covered by it?

Mr. DURMENT: That is objected to as incompetent, immaterial, hearsay and calling for a conclusion.

The MASTER: Objection noted.

A. It was.

Q. Was it your own personal opinion as to the reasonable, moderate valuation of those properties?

A. It was.

Q. Have there been any subsequent transactions in property adjacent to this property or similarly situated, that have served, in your opinion, to corroborate your views with regard to these values?

Objected to as incompetent and immaterial.

A. I don't recall any specific instances just at the present time, but I should not require those for corroboration of my personal opinion as to the appraisal that I have made.

Q. But what is your judgment as to its moderation at that time?

Mr. DURMENT: The witness has said he thought they were moderate.

A. I believe them to have been moderate.

Q. Have you an opinion as to whether the valuation, if made to-day, ought to be higher or lower than it was made at that time?

A. I should not make it any lower, if I were called upon to make it to-day. I think, upon what we call inside property, property adjacent to the river, I should be disposed to raise it a little.

Q. What elements did you consider in determining these

values? Did you consider the added cost which a railway company has to pay through what has been flippantly called here, a "hold-up" process, or simply the fair market value of the property?

A. We took into account the valuations of property similarly located that would need to be acquired to replace practically one of these lines of road in St. Paul. For instance, if one of these lines of railway right-of-way was private property adjacent to another road or several roads, that it would cost about the prices we placed upon it to acquire it for right-of-way.

Q. That is, at its fair market value?

A. At a fair market value.

Q. Mr. Cooper has testified that in some cases he took the valuation of the respective committees and incorporated them into his report; in some cases he lessened that valuation and lowered the figures. Do you know what the fact is in that regard with regard to the St. Paul valuations submitted by you and your associates?

Mr. DURMENT: That is objected to as incompetent and immaterial.

The MASTER: Objection noted.

A. I only know that Mr. Cooper made the statement to me that he had used the committee valuations upon the property lying southerly of Seventh street; that he had changed them in some of the districts, I do not know in which districts he had made changes.

Q. Nor what changes he made?

A. No, nor what changes he made.

Q. I show you Complainant's Exhibit 23—Watson, and I ask you if that is a copy of the report made by you and your associates to the Northern Pacific Railway Company of the valuation of its property.

A. Yes, I believe it to be so.

Mr. HOW: I offer that.

Mr. DURMENT: It is objected to as incompetent, immaterial and no sufficient foundation laid.

Mr. HOW: No objection being made on the score that I have mislaid the original?

Mr. DURMENT: Oh no; and I presume you will produce the plats referred to as a part of that, so we may use them?

Mr. HOW: Yes.

Q. Are these the plats furnished you by the Northern Pacific Railway Company at the time?

A. I believe them to be. They represent Northern Pacific property, which I know pretty well. I presume they are copies of the plats which we had, if they are not the very same ones.

Adjourned until Saturday morning, July 18, 1908.

FEDERAL BUILDING, Saturday A. M., July 18th. Hearing resumed.

JOHN J. WATSON,

recalled for cross-examination, testified:

By Mr. DURMENT:

Q. Mr. Watson, as I remember it, you said that the property available for railroad terminals in St. Paul, that is, available so far as its location, its topography is concerned, was principally that lying from the river north up along the valley of Trout brook, as I remember it; that isn't your language, but then—

A. What I meant to state, if I did not state it in so many words, was that the area for railway terminals, centered at the river level, is a restricted area, on account of the topography of the city. The inlets to that restricted area are largely through the Trout brook and Phalen creek valleys and up and down the valley of the Mississippi river itself.

Q. You spoke of this area which you said was available for railway terminals centrally located as lying west, as I remember it, from what we call Dayton's bluff?

A. Yes.

Q. Or around Dayton's bluff, on the westerly side of Dayton's bluff?

A. Yes, that district is bounded on the east by Dayton's bluff.

Q. And on the west by what?

A. Well, the business district, the first bench above the railroad yards.

Q. On the south?

A. Well, on the south by the river, of course.

Q. And on the north it comes almost to a point by reason of this first bench on the west side and Dayton's bluff coming together, almost?

A. Yes, sir.

Q. How far north from the river is that point where these two benches or sides converge?

A. Well, I should say about half a mile.

Q. And about how wide at the river, that is, east and west, is that area?

A. I should think about three-quarters of a mile along the river; say from Jackson street to Dayton's bluff.

Q. You mean at the foot of the bluff, not at the top of it, of course?

A. Of course at the foot; the bluff is almost perpendicular at that point.

Q. And about what height?

A. Oh, I should think that bluff was from eighty to one hundred feet above the level of the tracks there, parts of it higher.

Q. Can you tell us what additions, as they are known of record and commonly spoken of, would be included, or por-

tions of additions, in this area you speak of?

A. A considerable part of Kittson's addition; I think a part of St. Paul Proper and Whitney & Smith's.

Q. They would be west of Phalen creek, would they not?

A. They would be west of Phalen creek, yes; and there are some subdivisions down in there that I don't recall. I think there is a Dawson's Re-arrangement, or something of that sort; I don't recall the exact designation.

The MASTER: Terry's addition?

WITNESS: No, I don't think so; Terry's is farther out.

Q. Well, on the east side of Phalen creek, what additions lie within this area or portions of additions?

A. Well, a part of Lyman Dayton's. Lyman Dayton's addition went down into the flat.

Q. Is there any difference in the value or availability of the different portions of this plateau you have spoken of for railway purposes?

A. Yes, I consider it so.

Q. State generally what difference there is in the different portions of it as to value and as to availability.

A. The property at the west end of the district is the more valuable part; it is up against the business district. It is also available for all of the roads that come in. That on the east is reached by fewer roads, and the property beyond to the east of it is not as valuable, there is no business of any consequence in there. Above the bluff it is a residence district.

Q. Why can all the roads reach the property on the west of this district when they can't reach the property in other directions?

A. Well, their lines converge, come in at this point; they centre there.

Q. That is, they centre on the west?

A. On the west; all the roads center into the union depot, they do not all reach Dayton's bluff.

Q. There is no reason why, though, if they were to wipe out all these roads and start to use that for terminal purposes, that they might not centre on the other side? There may be reasons why they would not, but there is no reason why they might not?

A. Well, I don't suppose anything is impossible to a railroad engineer.

Q. Well, in other words, so far as the mere fact of the roads that come into that district converging at one point, that is a mere matter of choice, influenced, of course, by conditions or surroundings, but not a matter of necessity?

A. Well, I suppose not. Naturally a railroad company seeks business where it is located.

Q. My recollection is that yesterday you said there would be a difference in value, also, with reference to the river, property nearer the river; would that be more valuable, or property farther away more valuable?

A. I don't think I testified as to that.

Q. My recollection is you said, at least, that if you were to make the valuation today, you would increase the value of the properties lying nearer the river.

A. Well, I meant the central properties; that is, beginning with the union station. I consider property on the union station grounds the most valuable property in St. Paul that is used for railway purposes.

Q. Now, why would you increase that property now over what you valued it at a little over a year ago?

A. On account of the general appreciation, the stiffening of values of all inside business property in the city of St. Paul. It is a general appreciation of all the property centrally located within the so-called business district, and that would naturally affect the value of contiguous railway property.

Q. That is to say, there is a certain relation, in your opinion, between the values of railway properties and adjacent

property used for other uses?

A. Most decidedly.

Q. And when the conditions are such that the market value of properties adjacent to railway properties increases, you would say that they would necessarily, or fairly, at least, increase in a similar proportion the railway property?

A. A relative proportion.

Q. Now, I show you a blue-print, which I think has already been marked and received in evidence, or a copy of it, now marked "Defendants' Ex. P—Watson"; it is one of the blue-prints you looked at yesterday, I think, and identified as showing Northern Pacific property. Can you from examining that tell where the property shown on that blue-print is located? I mean by that whether it is located within this area you have spoken of that is available for railway terminals.

A. Yes, sir.

Q. Now, what of the property that is shown on this plat Ex. P is within the area you have said was available for railway terminals?

A. All of the property colored on this plat is within that district. All of the property shown in colors on this plat is within that district.

Q. By "shown in colors" you mean that which is marked yellow or purple?

A. Yes.

Q. All that is within that district and available for railway terminals?

A. Yes.

Q. I suppose, in addition to that, there is also available for railway terminals, that which shows railway tracks on it?

A. Yes.

Q. Now, I notice here, colored in purple, certain blocks marked 16, 28, 29, 30, 40, 41, 43, 51, 52 and 60. Can you tell in what addition those are?

A. Block 38, I am quite certain, is in Lyman Dayton's addition; I think blocks 29 and 30 are a re-arrangement of Lyman Dayton's; Dawson's re-arrangement of block 29 of Lyman Dayton's addition is the one that is marked 29, I think.

Q. And 30 is what?

A. 30, 40, 41 and 43, I think, are all in Lyman Dayton's addition.

Q. How about the others, 51, 52 and 60?

A. I think those are also in that addition. It is a very large addition and these numbers of adjoining blocks would indicate that.

Q. There seems to be here, lying on this plat, between what appears to be Ames street and Essex street and Commercial street and the yellow property, a large area colored in purple which is not marked; what addition is that in, do you know?

A. I think it is all in Lyman Dayton's addition.

Q. And you don't know what block that is?

A. Well, that shows to be 52. My recollection is that there used to be a mill-lot in that addition, that was owned by the Ames; I think it was the Ames mill-lot or some such designation; I have not had occasion to refer to it for a number of years and my recollection is a little indistinct.

Q. You say that you devoted about ten days' work—that is, the committee of three of you—in making the valuation of these railway properties?

A. Yes.

Q. That was the railway properties in St. Paul of how many railroads?

A. Seven roads.

Q. And all of them had terminal property in St. Paul?

A. Yes.

Q. Will you tell us what the seven roads were? Give us the names of them.

A. The Great Northern, the C. M. & St. P., the Omaha, the Chicago Great Western, the St. Paul Union Depot Company, the Wisconsin Central, the C. B. & Q., and the Northern Pacific.

Q. The Rock Island was not included in that?

A. That came in afterwards, yes, sir.

Q. The same committee examined that and valued it?

A. Yes, sir; and later, the Terminal Transfer.

Q. That is, of the Minnesota Transfer Railway Company?

A. The Minnesota Transfer Railway Company. But that Transfer Railway Company was not done at this time; it was several months later, I think.

Q. You examined these all at the same time, practically, that is, the seven you speak of?

A. We had the maps of the eight roads before us when we started in.

Q. Well, it was practically one examination of the terminal properties of the entire eight roads?

A. Yes, sir.

Q. The ten days covered all of it?

A. Yes.

Q. And I suppose that you valued them all upon the same basis, or, at least, maintained a relation between the values of the different roads?

A. Certainly. For instance, starting and agreeing upon valuations of the union depot terminals, from Sibley street to the eastern terminals, it fixed relatively a value for property of the other roads immediately adjacent, not necessarily the same, but it formed a basis.

Q. A basis of comparison?

A. A basis of comparison, and so that, after we had appraised one road, we could go very rapidly over the next one.

Q. You have said here that in doing this (that is, in appraising the value of any one road) you tried to assume that

that road was wiped out from there, and it or some other railroad wanted to re-acquire that particular property for similar purposes?

A. That was one element. Of course, our familiarity with values everywhere in the city entered into the—

Q. Oh, yes, your familiarity with values and with the methods of acquiring and the difficulties in the way of acquiring railroad right-of-way simply enabled you then to say what, in your opinion, under the circumstances I have stated, that railroad would have to pay to acquire that right-of-way?

A. Yes.

Q. And that was upon the basis that it would have to acquire it all at once, or within a comparatively short time? I mean this one road.

A. Well, now, don't misunderstand me. I don't mean to say that we placed the value of that right-of-way simply upon what we thought it would cost to acquire the right-of-way, but we placed a value upon it as it was there. I am of the opinion that no one of these roads could duplicate its property at the appraisement we made of it, in view of my experience in acquiring railway properties.

Q. Well, then, what did you mean when you said, in answer to Mr. How's question, that you in fixing this value fixed what in your judgment it would cost to acquire it provided this property was not then in use by the railroad and that particular railroad or some other road wanted to acquire it?

A. I just stated that we considered that phase of it in arriving at our values.

Q. And did you make it more or less than you thought it would cost to acquire that?

A. I think we made it less.

Q. What percentage less?

A. Well, we didn't consider that.

Q. Well, why would you make it less than what you were

satisfied it would cost the road to acquire it?

A. We were instructed—the only instructions we had from the committe that requested us to make the appraisal, were that we should be conservative in our valuations.

Q. Oh. Then it would be impossible, of course, to tell exactly what it would cost to purchase that for right-of-way purposes in case the road didn't have it?

A. It would be impossible to say exactly what it would cost.

Q. And it might cost a very high figure, or it might cost a comparatively low figure, depending upon how they went about it and what length of time they took to acquire it, and various circumstances?

A. Certainly.

Q. And instead of fixing the outside limit of what under many circumstances it would cost to acquire it, you fixed an average?

A. A conservative—

Q. A conservative average of what it would cost to acquire it?

A. Yes.

Q. That is, under some conditions it might be acquired for the price you fixed or less, and under others it might cost a good deal more?

A. Yes.

Q. I suppose that these particular properties which you valued hadn't been transferred or sold, bought or sold on the market, within recent years?

A. Not within recent years.

Q. Did you examine or inquire into the original cost of these properties when they were acquired?

A. Well, in a number of instances I had sold properties to the railway companies, twenty years ago.

Q. And in those cases you knew what it cost?

A. I knew what those properties had cost.

Q. I suppose that what they paid for them twenty years ago didn't have any particular influence in your mind in arriving at values a year ago?

A. Well, only in a general way, relatively.

Q. As a matter of fact, they were valued (those that you had sold to the road) by you a year ago at a very much higher figure than was paid for them twenty years ago?

A. Certainly, in some instances.

Q. Do you know how much more—twice or three times?

A. Do you want an instance.

Q. Well, I don't want a single instance, which is all your way. If you can give me a number of instances which will show fairly what was done, I would like to have them.

Mr. HOW: What you want is some instance that is all your way!

Mr. DURMENT: Of course, I would like to have that, but I am willing to take instances both ways that would be fair; I don't want instances all against me.

Q. If you can give me a number of instances, why—

A. I can give several.

Q. Well, let us have them.

A. More than twenty years ago, I sold to the Wisconsin Central Railway Company, as broker, (I was not employed by the Company, but made the sale to them) lots on East Third street at about an average of $3 a square foot.

Q. What did you value them at in this appraisement?

A. $4.25.

Q. How near is that particular property you have just spoken of to Third and Sibley?

A. Well, those properties were between Pine and Willius streets on Third. It is several blocks, from eight to ten blocks below Sibley street..

Q. At that time Third street farther west was the main

retail street in St. Paul, was it not?

A. Yes.

Q. And right along Third street, say from Sibley down to the railroad yards, was the center of the jobbing district then, wasn't it?

A. Very largely so.

Q. The center of he jobbing district has somewhat shifted since then, hasn't it?

A. The district has expanded.

Q. Yes, but I say the center and principal part of it has shifted?

A. You might perhaps say that the center had grown away from that.

Q. And the more important and heavier shippers among the jobbers have moved farther away from these lots that you have just referred to than they then were?

A. Well, the growth of the district has moved them away. Some of the same jobbers are in that Third street district today.

Q. Sure, but at the time you made this sale to the Wisconsin Central, the bulk of the jobbers and jobbing interests of the city of St. Paul was centered right about Third street, near the railroad yards there?

A. Yes.

Q. And now comparatively a small part of it is centered there?

A. Well, the wholesale district is all adjacent to that same railroad territory.

Q. Same railroad tract?

A. Yes; it has simply grown, it has expanded; it couldn't all get down on Third street; it had to go somewhere, but it has kept just as close to the district as possible.

Mr. How? It could not expand in both directions?

WITNESS: It could not expand across the railroad yards.

Q. How many more railroads, do you know, are in that district now than when you made that sale to the Wisconsin Central?

A. Well, the Burlington, for one; of course, there are other roads that have entered St. Paul since that time, but the terminals are not located in there.

Q. Where are they located?

A. Well, the Rock Island and the Great Western are across the river; and the Soo to the north and west.

Q. Did you, in making your values of these railway properties, take the transfers of adjacent property for a year or two previous, any large number of transfers, so as to find what had been the actual selling prices of properties adjacent, before determining your figures for these values?

A. Not to any great extent.

Q. Did you examine or take into consideration the values of adjacent properties not railroad properties, for the purpose of assessment or taxation, in arriving at your figures?

A. No, sir.

Q. Now, you have said that you did take into consideration, in some instances, the prices which the railroads had paid in prior years for the particular lands which you valued, and you gave us one instance of it.

A. Well, now, another instance was the sale of the corner of Fourth and Broadway to the Northern Pacific road, over twenty years ago, at five dollars a square foot.

Q. What did you place it at in this valuation?

A. $8.

Q. That was the one occupied by the—

A. It is now occupied by their general offices.

Q. That was because there had been a general advance in the price of business property in that neighborhood?

A. Yes, and—

Q. Had there been any considerable—

Mr. How: Let him finish.

WITNESS: And what we considered an appreciation in value of property. We didn't place the value upon the Northern Pacific property because they paid $5 a foot for it. I merely instanced that to show that I was familiar with what that property was worth twenty years before. Of course, property in a growing city is worth more in a city when it has a population of 200,000 people than when it only had 50,000.

Q. That, of course, you take into consideration?

A. Certainly.

Q. I suppose that appreciation in properties, due to those facts varies, that is, the rate of appreciation varies in different parts of the city.

A. Certainly.

Q. It appears here that there are some terminal properties on the West Side; the Rock Island and the Chicago Great Western property.

A. Yes.

Q. Has there been any considerable appreciation of properties on the West Side, say in the last ten years, in value?

A. Yes, in the last ten.

Q. How much would you say, generally, in properties adjacent to those lines?

A. Well, in the last ten years, I think, taking the district as a whole, at West St. Paul, the values have appreciated anywhere from fifty to one hundred per cent; but twenty years ago, or fifteen or eighteen years ago, perhaps, higher values had ruled than did ten years ago; there had been a great slump, especially in that West St. Paul property.

Q. And higher values than rule today, hadn't they?

A. Yes, in some instances.

Q. What was the rate of appreciation, would you say, in the last ten years in the eastern district there, along say two or three blocks on either side of the right-of-way of the Chi-

cago Great Western and the right-of-way of the Rock Island?

A. Well, there has been no very marked appreciation east of the Rock Island right-of-way.

Q. Has there west?

A. Yes, there has been an appreciation west of it. That has been filling in with warehouses, and there has been a demand for it.

Q. To what extent has there been an appreciation?

A. Oh, in some instances fifty to seventy-five per cent.

Q And when was that, within what period?

A. Well, within the past seven or eight years.

Q. What, if any, within the past five or six years?

A. Well, it has been perhaps very largely in the last five or six. You started off with ten years. Ten years ago, prices over there were in the slump.

Q. And some seven or eight years ago they began to boost just a little?

A. Yes, there has been a gradual appreciation.

Q. Now, you have said that this same committee, as a part of this work, valued the Rock Island properties; did you also the Chicago Great Western?

A. Yes.

Q. The Rock Island properties had been acquired by purchase, within five or six years, I don't know but less time than that, prior to the valuation you made, had they not?

A. Yes, five or six years, I should think.

Q. Did you inquire into the prices which the Rock Island paid for those properties in making this valuation.

A. No.

Q. You didn't take that into consideration?

A. No.

Q. Do you remember what valuation, as a whole, you put upon the Rock Island properties?

A. I do not. We merely put prices on the property in

certain districts. We made no extensions and did not know what the aggregate values amounted to in any instance.

Q. Have you with you the prices you put upon the Rock Island properties?

A. I think I have.

Q. Will you produce them please?

Witness produces paper and same was marked Defendant's Exhibit 0—Watson.

Q. I suppose, Mr. Watson, that at least in your opinion the valuations you fixed upon the Northern Pacific property are entitled to no more weight than those you fixed upon the Rock Island, nor are those you fixed upon the Rock Island any more reliable than those you fixed upon the Northern Pacific?

A. I consider they were all reliable, from my standpoint.

Q. From your standpoint they are equally reliable?

A. I used the same measure of discretion, I think, in making one valuation that I did in making another.

Q. And you know of no reason why your estimate of the valuations of the Rock Island properties, for instance, should be entitled to less weight or consideration than those values you made for the Northern Pacific?

A. I know of no reason.

Q. Now, if it should be true that upon the basis of the values you fixed as to the Rock Island properties, the valuation for the properties would be between $900,000 and $1,000,000, when in fact the Rock Island Company had bought those properties, within five or six years before, in that district, for less than $150,000, would say that your valuation was a fair valuation?

A. Well, not knowing what the aggregate of those valuations may be in either case, whether your statement as to the cost is correct or not, I should not change my valuation of the Rock Island system, as it was presented to us, no matter

what it cost. They might have picked it up for nothing, it would not affect my valuation of it at the present time.

Q. Well, then, if you had been told by the Railroad authorities (the Rock Island authorities), at the time you made that valuation, that they had bought that property, say, about six years before, and had paid $150,000 for it, it would have made no difference in your valuation?

A. I don't think so.

Q. Even though your valuation of it would bring it up to nearly a million dollars?

A. Not necessarily.

Mr. DURMENT: We offer in evidence, as a part of the cross-examination, this "Defendants' Exhibit 0—Watson." We will show, either at this time or before we get through with the case (at least I am informed we can show it), that these properties of the Rock Island system were purchased for not to exceed $150,000, within about five or six years before this valuation was made, and that the valuation, figured upon the basis that the witness has given, is between nine hundred thousand and one million dollars.

Q. You have said, Mr. Watson, that the property on the West Side, along the line of the Rock Island and the Chicago Great Western, twenty years ago, was much higher than it was ten years ago?

A. I think so.

Q. And as high or perhaps higher than much of it is today?

A. Some of it, certainly, in that district; I am speaking of the West Side district.

Q. I mean the West Side district. Now, is it not true that the properties down in this area between Dayton's bluff and the business district, was higher twenty years ago, or as high twenty years ago, as it is today?

A. No, I hardly think so.

Q. Well, wasn't it about so?

A. No, not hardly.

Q. Well, how much difference was there?

A. Oh, well, I couldn't say, off-hand.

Q. That was not so high then as it is today?

A. I don't think so.

Q. Isn't it as high, practically, as it was in January, 1907?

A. Not any very large change in eighteen months.

Q. There has been some appreciation?

A. I think there has been some appreciation, yes.

Q. Has the business property along Third street there, say from Third and Sibley, down towards the railroad yards,—had it increased materially in price in January, 1907, over what it was held say twenty years ago?

A. Well, right on that particular street between Sibley and Broadway?

Q. Yes.

A. There had not been any great change right in there.

Q. Prices are not materially higher?

A. Yes; they are higher but the appreciation there is not as marked as it in other districts of the city, in the business districts.

Mr. DURMENT: If it is not already in evidence, we shall want to introduce in evidence this blue-print which we have designated this morning as Exhibit P. I think it is already in evidence, in connection with Mr. Cooper's testimony.

Mr. HOW: I understand that the objection to the admissibility of the several reports which I offered in connection with the testimony of the several real estate experts, on the ground that they refer to plats, and that the plats were not offered with them, is not insisted upon, counsel having had all of the plats in their possession for purposes of cross-examination, and it being apparent that the record would be so

tremendously and voluminously extended if they were introduced.

Mr. DURMENT: That is true; and if I didn't make it clear yesterday, I will say now, that as to each of the three reports you have introduced, so far as the objection was based on a failure to produce plats or maps referred to in them, that objection is withdrawn.

Q. I ask you to look at plat marked "Defendants' Exhibit Q—Watson." Will you indicate what property on this map is referred to in the report of this committee under the head of "Snelling Avenue to Everett Ct., eight cents per square foot."

A. This plat does not show Everett Court. I think that it covers the property within the green lines between Snelling avenue and what is shown on this plat as Prior avenue.

Q. Will you indicate, so that the Reporter may take it down what property appraised by this committee as being from Prior avenue to Folwell, and all north of Great Northern tracks, 15 cents per square foot, is shown on this plat Exhibit Q?

A. The property colored green, west of Prior avenue, and north of Great Northern Railway tracks to Folwell avenue. That is not shown on this map. It is that property right north of the Minnesota Transfer and immediately adjacent to it.

Q. From Prior avenue west, still farther than is shown on this map Exhibit Q?

A. Yes, sir.

Q. Have you ever made a computation as to how much eight cents per square foot would be per acre?

A. Well, I could do it. I haven't it in mind.

Q. As I figure it, it would be $3,484.80 per acre. And at 15 cents per square foot, I figure it would be $6,534 per acre. Now, did you in making this valuation, take into considera-

tion, at all, the properties immediately adjacent to the railway properties which you appraised and the values of them?

A. To a certain extent. The Minnesota Transfer Railway Company's terminals, immediately adjacent to this property, very largely influences the value of that property and influenced our decision as to that valuation.

Q. But the Minnesota Transfer properties are not adjacent to the properties you appraised for the Northern Pacific, shown on this plat, Exhibit Q, are they?

A. Why yes, that part of it in there. Here is the Minnesota Transfer, right in here.

Q. Yes, but the Great Northern Railway tracks lie between the Minnesota Transfer properties and the Northern Pacific properties there, do they not?

A. They all go into the Transfer.

Q. I know, but they lie between?

A. Yes, but still the fact that those tracks run across there does not influence my opinion in any way.

Q. Is there any particular reason why the property between the Great Northern tracks and the Northern Pacific tracks, as shown on this plat Exhibit Q, would be less valuable than the right-of-way of the Northern Pacific Railway Company at that point, as lands?

A. More valuable.

Q. It would be more valuable?

A. Yes, that is the statement; that is appraised at fifteen cents and this at eight.

Q. But is there any reason why the land not in actual use for railroad purposes and outside of the right-of-way, but lying between the right-of-way of the Northern Pacific Railway Company and the right-of-way of the Great Northern Railway Company, should be less valuable than the right-of-way of the Northern Pacific, as land?

A. This land in here?

Q. Yes.

A. I don't know whether we appraised that or not. It is, in a general way, worth about the same figure.

Q. About the same figure as the right-of-way of the Northern Pacific adjacent to it?

A. Yes.

Q. You did not inquire as to who owned the property shown on this Exhibit Q, marked in purple, and adjacent to the Northern Pacific properties you appraised, did you?

A. No.

Q. Nor as to when it had been transferred?

A. No.

Q. Nor as to the price paid?

A. No.

Q. Well, unless I am very much misled in my understanding of the location of this property, Mr. Cooper has testified that this property, lying adjacent to the Northern Pacific right-of-way, which you have appraised at 8 cents and 15 cents per square foot, and between it and the Great Northern Railway property, was bought by the Northwestern Improvement Company, within two or three years past, and the total cost of acquiring it, being 55.86 acres, was $56,587.55; would you say that they bought that property too cheap or that you have appraised the right-of-way too high?

A. I don't suppose anyone can buy property too cheap, but it was certainly a bargain at about a thousand dollars an acre.

Mr. How: Did not Mr. Cooper testify that the Northwestern Improvement Company didn't want the property and bought it because it was so cheap they couldn't afford not to take it?

Mr. DURMENT: I don't think so.

Mr. How: Well, he will, if he didn't, because that is the fact.

Mr. DURMENT: Well, I don't know; I don't doubt that, but my recollection is that he testified because they found they were going to need it and could get it.

Adjourned until the morning of July 21st, 1908.

FEDERAL BUILDING, Tuesday A. M., July 21, 1908, hearing resumed.

WILLIAM L. DARLING,

recalled on behalf of Complainant, testified:

Mr. HOW: Mr. Darling would like the privilege of explaining some things with regard to his Exhibit 3, which is a statement of the valuation of the Northern Pacific properties within the state of Minnesota, at least the estimated cost of present construction, and I should like the privilege of asking him to make those explanations before his cross-examination continues.

MR. DURMENT: No objection.

By Mr. HOW:

Q. Proceed, Mr. Darling.

A. These errors that I find, do not change the total estimate, but they are errors in detail. It changes the summary of items down to "Miscellaneous Equipment," so that the total is $75,388,285.94. Now, I don't care to change the estimate, because that difference is covered by my Contingencies; that item of contingencies is supposed to cover all such items as that. Now, those changes are due to the fact that we have duplicated some things in the item of $64,049,524.14, and we have left out some things in equipment. So the differences balance, by the difference which I had previously of $75,323,968.58 and $75,388,285.94, or about $54,300.

Q. There is that difference now, finally?

A. Yes, but I would not care to change it because that differ-

ence is covered by the ten per cent. That ten per cent is supposed to allow for those things. That ten per cent is also proposed to allow for some other things that we haven't that were not included in the estimate, for instance, omitted items previous to the December 31st estimate, amounting to $55,416.

Q. And you don't care to add those omitted items now?

A. No, sir.

Q. Because you think they are included properly within your ten per cent contingency?

A. Yes, sir. And another item of 382,880 cubic yards of grading on the Fond du Lac branch, between the end of the present track at Fond du Lac and Thomson. Now, this is an old track, on which the steel has been taken up, but it is grading that has been done and is available for a railroad or for another track. I would also like to say that the estimate for December 31, 1906, does not include a lot of work under progress between Lake Park and Fargo, for the reason that when that estimate was made an arbitrary point was taken at Lake Park as determining the amount of work that should be estimated, whereas there was a lot of work that we really did not include, but it is included under the estimate of April 30, 1908. It also contains (that is, the estimate of December 31, 1906) $264,777.75 for locomotives that are assigned in Minnesota that actually make their runs in Wisconsin.

Q. And should that, therefore, be subtracted from the total?

A. Yes, sir.

Q. And what is the amount, again?

A. Well, I don't know whether it should be subtracted or not; it is assigned to Minnesota.

MR. DURMENT: But they make their runs in Wisconsin?

WITNESS: They make their runs in Wisconsin. Now, I don't know whether it should be subtracted or not; we actually included it in our estimate, however.

Q. Now, I want to ask you one thing—I hope to make things

clear—I observe that in your Exhibit 2, which is your estimated cost of present construction of the entire system, you have 43 numbered items, and you have, in addition to that, ten added items, whereas, in your Exhibit 3 (the exhibit which is confined to the state of Minnesota) you have only 29 items, with 14 additional. What causes the difference in making those respective schedules?

A. Well, the system estimate is subdivided, under the Interstate Commerce distribution.

Q. That is, under the rules of the Interstate Commerce Commission?

A. Yes, sir; the state system is subdivided according to the State Commission.

Q. Under their instructions?

A. Yes, sir.

Q. So that you have merely followed the instructions of the respective bodies that claimed jurisdiction over you for the purpose?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. Mr. Darling, this Exhibit 2, the estimated cost of reproducing the Northern Pacific system, excluding Spokane, Portland & Seattle, Portland terminal, and Lake Superior Terminal & Transfer Railway properties, as I understand it, was made up by you partially from figures or amounts furnished you by other departments, but represents your estimate of the cost of reproducing the System, excepting the property as stated there at the top; that, of course, would include roads owned by the Northern Pacific which the Northern Pacific did not itself construct?

A. Yes, sir.

Q. Does it include also roads owned by other corporations

but which the Northern Pacific controls through its ownership of stock?

A. Well, I couldn't say as to that. It includes all roads under the Northern Pacific organization.

Q. That is, under the control of the Northern Pacific?

A. Yes, sir.

MR. HOW: You mean operated by the Northern Pacific?

WITNESS: Operated and owned by the Northern Pacific, yes, sir.

MR. HOW: Well, they are all operated by the Northern Pacific, everything covered by that, as I understand it.

WITNESS: No, sir; the St. Paul union depot is not operated by the Northern Pacific.

Q. And that is covered by this?

A. But they have an interest in it, and that interest is here.

Q. Then this represents the interest of the Northern Pacific Railway Company in all properties in which it has an interest, that is, all railroad properties?

A. All railroad operating properties, yes, sir.

Q. I notice here in "36", cost of road purchased on that exhibit, nothing included; where is the cost of the reproducing of the roads purchased in this statement?

A. This statement does not purport to be the cost of anything. It is an estimate of the cost of reproducing those lines now.

Q. Yes, but where in this Ex. 2, is your estimate for reproducing the roads which were purchased by the Northern Pacific?

A. It is included in all these items.

Q. In all these items?

A. Yes, sir.

Q. It is distributed, then, through all these items?

A. Yes, sir.

Q. Each road gets its share?

A. Yes, sir.

Q. We would like you to furnish us a statement giving us the names of the particular road of the Northern Pacific system the cost of reproducing which is covered by this Ex. 2. What I want is this: The Northern Pacific System, the cost of reproducing which you have estimated in this Ex. 2, is made up of properties which are known as the Northern Pacific railroad, and also of properties which are, or formerly were, known by other names. Some of those, perhaps, were built by other corporations and acquired by the Northern Pacific Railway or its predecessor or by the Railroad or its predecessor, and certain others of these properties are now held by other corporations, but the Northern Pacific Railway Company is interested in them either by ownership in part or all of the capital stock of the corporation, and all those properties together go to make up, as I understand it, what the railroads claim to be the Northern Pacific System.

A. Yes, sir.

Q. And all those are included in your estimate here Ex. 2?

A. Yes, sir.

Q. Now, I want a list of those, so we may know just what particular properties of what particular corporations, as they were originally produced, are covered by this estimate.

A. Simply a list of the roads, or do you want a statement with reference—

Q. No, I am not asking to divide the values, or anything of that sort,—

A. Just a statement of the roads?

Q. —that is an impossible job, or at least too long, I should think.

MR. HOW: How long will it take?

WITNESS: Well, I don't think it will take much of any time, because it is in the annual report. He wants the names of the roads; I don't know whether he wants the mileage or not, but

he wants the roads included in this report and which are a part of the Northern Pacific System. I can give him the names and then he can subdivide them any way he wants to.

Q. Would it be any great work, when you give the names to include the mileage?

A. No, I don't think so.

Q. Well, I will ask you then to include the mileage of them.

MR. HOW: Do you want the names of the roads which were originally constructed, properties which are now owned by the Northern Pacific Railway Company, or only the names of companies which originally constructed portions of what is called the Northern Pacific Railway System, the title to the properties of which are still in the names of those subsidiary companies, and the stock of which is owned by the Northern Pacific System, or both?

MR. DURMENT: I want both. I want the names of the roads that the corporations had constructed, where the property has been acquired and is now owned by the Railway Company, and also the names of subsidiary corporations where they are controlled through the ownership in part or in whole of the stock or interested.

MR. HOW: You will just take that out of the annual report and give him a list?

WITNESS: Yes, sir; we keep that in detail.

Q. Now, with reference to your Ex. 3, Mr. Darling. As I understand it, you say that, in checking over Ex. 3, you find there have been some items omitted which you think ought to be in there, and there have been some estimates which you find are not correct?

A. Yes, sir.

Q. Which would make a change in the footing of $75,323,968.58?

A. Yes, sir.

Q. But that you don't desire to change your footing—

A. No, sir.

Q. —on this exhibit, because those differences are included and were intended to be covered by the item "Contingencies, ten per cent"?

A. Yes, sir.

Q. So there would be no change in your schedule—

A. No, sir.

Q. —or in this exhibit because of those things?

A. No, sir; I merely wanted to explain those errors in detail, so that when you check up the details we will know where the differences are.

Q. Now, there is another thing I don't quite understand from your explanation. Under "Estimated cost as of December 31, 1906," being the first column on Ex. 3, there are certain details given which go to make up the estimated cost. Under "Estimated cost as of April 30, 1908," for the first 29 items of those details we have $64,049,524.14; is that supposed to be the cost of those 29 items, as shown under the first column, with added to it such expenditures as had been made for those items after December 30, 1906, up to April 30, 1908?

A. Yes, sir, it also includes an estimate,—or, not an estimate but the cost of that portion of the work under progress between Lake Park and Fargo previous to December 31, 1906.

Q. Oh, yes.

A. We had a lot of work under way and we didn't include all of it.

Q. Now, that work from Lake Park to Fargo was a change of line, wasn't it?

A. Yes, sir.

Q. And was a substitution of a new line for an old?

A. Yes, sir.

Q. The old line was abandoned?

A. No, sir.

Q. Or is it to be abandoned when the other is completed?

A. Well, probably; we don't know yet.

Q. You don't know whether it will be or not?

A. No, sir.

Q. Then at this time, you are unable to say whether the two lines will continue in use after this from Lake Park to Fargo is completed or not?

A. The probabilities are a portion of it will, but I don't think all of it will, but it is impracticable to determine just now.

Q. And you can't at this time, I suppose, separate the cost of reproducing that line between Lake Park and Fargo and the cost of the old line from Lake Park to Fargo?

A. It can be done, yes, sir, but I can't say just what portion of it will be retained.

Q. But you haven't done so?

A. No, sir.

Q. And you wouldn't at this time be able to separate, of course, that which will not be retained, the cost of reproducing that, from the other?

A. No, sir.

Q. Because you don't know what will be retained?

A. No, sir.

Q. Now, you also said that under this item of December 31, 1906, there is included 382,880 cubic yards of grading on an old line from Fond du Lac to Thompson?

A. No, sir, I think you misunderstood me. What I intended to say was that there is 382,880 cubic yards of grading that has been completed but on which now we have no track, and which I believe should be a part of this estimate but never was included as a part of this estimate.

Q. Then that was never included?

A. No, sir.

Q. As I understand, that grading was formerly used as a roadbed for a road actually operated by the Northern Pacific?

A. Yes, sir.

Q. But it was abandoned as an operating road, or an operated road, rather, and the rails taken up some time ago?

A. Yes, sir.

Q. How long since?

A. I couldn't tell you just now, but I think it is eight or ten years.

Q. And how many miles is that?

A. I don't know, exactly, but I should judge ten or fifteen miles. I could give you that exactly by looking it up.

MR. HOW: It is not in this at all, is it?

WITNESS: No, sir.

Q. But no part of that is included in this Ex. 3 of yours?

A. No, sir.

Q. Not even the cost of the right-of-way, or anything of that sort, so far as you know?

A. I couldn't tell; so far as I know it is not.

Q. Which of these items on Ex. 2 (if you can state) are figures or estimates furnished you by other departments than your own.

A. That is the System, is it?

Q. Yes, that is the System.

A. Item 2, right-of-way and station grounds, and real estate.

Q. You don't know whether this ten or fifteen miles of line between Thompson and Fond du Lac is included in that or not?

A. No, sir, I do not. In this estimate No. 2, did you have reference to the first column, or both columns?

Q. The first column I had reference to there. I suppose it is the same in both, though.

A. No, sir, the difference between the first and second columns, it was all furnished to me by the Auditor.

Q. But the second includes the first, doesn't it?

A. Yes, sir.

Q. Then, as I understand, item 2 in neither column, was

your own work?

A. No, sir.

Q. It was furnished you by somebody else?

A. Yes, sir.

Q. And you don't know whether this Fond du Lac line is included in that or not?

A. No, sir, I do not.

Q. Is there any other item in there which was furnished you by some other department?

A. Yes, sir. Passenger train cars, item No. 39; item No. 40, freight train cars; item 41, work equipment; 42, floating equipment.

MR. HOW: How about 37?

WITNESS: I got that up myself. Grade revisions, 1897 to 1901, furnished by the Auditor, actual cost.

Q. Now, as to this item "Grade revisions 1897 to 1901," does that include the 20 per cent which I think you testified was added to bring the roadway at certain points up to the present standard?

A. No, sir.

Q. That is in addition to that?

A. Yes, sir.

Q. Or something different. Getting back to that, with reference to that work of 20 per cent added, or about that, for bringing the old roadbed up to the present standards, have you any figures which show what portions, or how many miles of roadbed, were so increased by you?

A. Why, yes, but it was practically all increased on this estimate here.

Q. I know on this estimate, but in fact have you any figures showing what increase actually was made, and when made?

A. Yes, sir. I don't see it in these details, but I have that somewhere. I have it in the office if it isn't here.

Q. If you have it, I wish you would produce a copy of it and

let us attach it to this exhibit.

A. Yes, sir.

MR. HOW: Well, do you understand each other? Do you mean how many miles have been so increased, or what is the—

MR. DURMENT: Well, the witness has testified, at some previous examination, that he included in his estimates, as I recall it, an allowance for bringing the original or old roadbeds up to the later or present standard, and as I recall it he said that that required an addition of about twenty per cent of grading at those points.

WITNESS: Yes, sir.

MR. DURMENT: And I don't remember that he has ever given us anything from which we can determine how many miles of that was claimed to have been done, or where it was done or anything of that sort, and we have no means of checking up or testing it.

Mr. How: That is, whether it was done over on only a part of the System, or the entire System?

MR. DURMENT: Yes.

WITNESS: I can say, with reference to this estimate, however, that all lines in the state of Washington, and all lines in the state of Minnesota, were eliminated from that, because we have got very close estimates and don't need to add that twenty per cent, and just now we are making up the details of North Dakota, and in a few days we won't have to include that.

Q. Oh, then, in your estimates here in Ex. 2, that twenty per cent is not added in Minnesota?

A. No, sir.

Q. Nor in Washington?

A. No, sir.

Q. And in your Ex. 3 it is not added at all?

A. No, sir.

Q. Well, if that is the case, you need not furnish the data.

A. We eliminate that twenty per cent as fast as we can

check up these details.

Q. In these estimates furnished us as to Minnesota it is eliminated, anyway?

A. Yes, sir.

Q. And under Ex. 2 it is eliminated, not only as to Minnesota but also as to Washington?

A. Yes, sir.

Mr. DURMENT: Well, then, I will withdraw my request for a statement of those items.

Q. Now, referring again to Ex. 3, I understand you to say that in this item "Locomotives, $3,389,392.64" you have included $264,777.75 for locomotives which under your system of operation were assigned to Minnesota, but which are in fact used in Wisconsin and not in Minnesota?

A. Yes, sir.

Q. You don't undertake to say whether they should be included or excluded from this estimate?

A. No, sir; I simply say they are included.

Q. In this Ex. 2, under the head of "Lines in Manitoba, $7,000,000," how many miles of road are included in that?

A. There are 200 and some odd miles; I have forgotten just how many.

Q. You don't remember how many?

A. No, sir.

Q. This item "Lines in Manitoba, $7,000,000," includes what?

A. It includes all Northern Pacific property in Manitoba.

Q. That would be roadbed, right-of-way, steel, depots, locomotives and cars?

A. Yes, sir. It would include anything that is leased to the Manitoba government

Q. And you don't recall, of course, off-hand, what was leased to them?

A. No, sir. I merely took the sum that represents the inter-

est that they received, at four per cent.

MR. HOW: The basis upon which the interest is calculated?

WITNESS: Yes, sir.

MR. HOW: The basis of value?

WITNESS: Yes, sir.

MR. HOW: The agreed basis?

WITNESS: The agreed basis of value at four per cent.

Q. Attached to this Ex. 2 is apparently a detail, which is the last, (I don't know what number it is) headed "Improvements and Betterments charged to Income,—System, from July 1 to November 30, 1906; from November 30, 1906, to May 1, 1907; and from May 1, 1907, to April 30, 1908"; and then the totals. What is the meaning of that detail?

A. Well, that is a statement showing the charges to improvements and betterments, which were furnished by the Auditor subsequently to July 1, 1906, and are included in the figures furnished by the Auditor in the second column, under date of April 30, 1908.

Q. That is, that detail is included in the item $108,096,399?

A. No, sir; that is the System.

Q. But it is included in the various items?

A. Yes, sir.

Q. In that column headed April 30, 1908?

A. Yes, sir.

MR. HOW: The various corresponding items?

WITNESS: It is covered by the items in that column.

Q. Now, "Improvements and betterments charged to income", I suppose that means they were paid for out of the earnings of the road or the income of the road?

A. Well, it is an Auditor's distribution; I don't know what becomes of it; officially I don't know what becomes of it. It is just simply a distribution made by the Auditor.

Q. But, so far as you are concerned, all you know about it is that statement that is given you?

A. Yes, sir, that is all I know.

Q. And that is given by him?

A. Yes, sir.

Q. And whether "Improvements and betterments charged to income" means it was paid for out of earnings, or whether it means it was paid for from the proceeds of bonds and stocks sold, you don't know?

A. I can't tell you, no, sir.

Q. Turn to the detail headed "Cost of One Mile of Main Track" attached to your Ex.2, (it is about the fourth sheet attached to the exhibit). As I understand your testimony, your Ex. 3 includes the cost of the lines in Minnesota at the figure shown on this detail?

A. No, sir.

Q. Why the difference in Minnesota, then, and what is the difference?

A. In Minnesota the estimate was made more in detail. I have assumed, on the System, that our track runs about 3,000 cubic yards of ballast per mile. In Minnesota, it was divided into districts and the ballast estimated on each district. Another difference is in the transportation of ties and rails. The transportation of ties and rails in one mile of track on the System would cover an average of a thousand miles, the estimate of ties would be different.

Q. Have you given us a detail in your Ex. 3, or in connection with it, of the cost per mile of the System in Minnesota?

A. No, sir; I have given you prices in detail, however; for instance I have given the price of track-laying, the price of ballast, the price of ties.

Q. Yes, but you haven't anywhere given us the figure at which you included the haul for steel and trimmings in Minnesota?

A. No, sir.

Q. My recollection is that you testified, at a former exam-

ination, that you included it at the average of four cents per ton per mile for a thousand miles.

A. That is on the System.

Q. No, but in Minnesota?

A. Oh, no, not in Minnesota.

Q. I will ask you to give us the figures which, in making up your estimate of the lines in Minnesota, you used for the haul on steel trimmings and for ties and angle-bars and bolts and spikes?

A. Yes, sir; I have those details but not here.

Q. And at what figure did you include the steel in the tracks in Minnesota lines?

A. I think the steel was either thirty or thirty-one dollars a ton; I think it was $30 a ton in Minnesota, plus the freight.

MR. HOW: It appears in one of the detail sheets.

Q. I will ask you, Mr. Darling, please, to make up for us, in connection with your Ex. 3, a detail of the cost of one mile of main track and a detail of the cost of one mile of branch lines, corresponding to the similar details for the System.

A. Yes, sir.

The MASTER: Do I understand this Ex. 3 is now to be considered in evidence? I doubt if it has been received. My recollection is Mr. How said he didn't care anything about it.

MR. DURMENT: Well, if it hasn't been, we will have it in. My understanding is that it was received.

MR. HOW: Well, I will offer it if the Master would like it to be in.

The MASTER: Very well, it will be considered in evidence, then. I wanted to have that definitely settled in the record, and I would like to have a copy furnished me.

MR. HOW: I will see that the Master gets a copy.

Q. Referring to this Ex. 3 again, "Contingencies ten per cent," at the expense of its being a repetition, I will ask you to state what that is intended to cover.

A. That is intended to cover all those items which it was impossible to see in making an approximate estimate of work already done, and it is also intended to cover any items that may be overlooked.

Q. Then it is a sort of a lump-item or figure to cover unforeseen obstacles and overlooked matters or matters where mistakes have been made in estimates?

A. Yes, sir.

Q. And things of that sort?

A. Yes, sir. I would like to cite you an example of that.

Q. You cited us two or three this morning in correcting your testimony.

A. Well, there is another one, in the Washington examination. When the Washington Commission submitted their estimate, their engineer claimed that there should not be a ten-per-cent item allowed for "Contingencies" because anybody that made up or included that item showed their ignorance, it was simply to cover ignorance. Well, the next day we discovered that the engineer had left out two items one of a million and a quarter dollars and the other of a million, for work done in Seattle and Tacoma. Now, that took nearly half of the ten per cent; so you can see that that is one item that that ten per cent covers. And, right in my own estimate here, I left out a million and a half dollars of equipment.

MR. HOW: There always ought to be put at the foot of one of those statements "e. & o. e."—errors and omissions excepted!

Q. Take your Ex. 3, and on what seems to be the third detail, "Material moved in Minnesota to April 30, 1908, in connection with the grading of the Northern Pacific property." I find there 6,032,200 feet of corduroy, at eight cents per foot, I suppose that is?

A. Yes, sir, per lineal foot.

Q. Now, what do you mean by corduroy?

A. Corduroy is a form of mattress, built of timber, that we

put on the swamps or in the swamps, to hold the roadbed up.

Q. What kind of timber is it?

A. Well, it has got to be a very stiff timber, that will be stiff enough in the center to hold up the roadbed while it is being constructed.

Q. Does it have to be shaped in any particular shape?

A. No, sir.

Q. Or anything of that sort?

A. No, sir.

Q. You simply cut down the trees?

A. Cut down trees of sufficient size, yes, sir, and lay them properly.

Q. They are trimmed, I suppose, the branches trimmed off?

A. Not always, no, sir; sometimes they are.

Q. And what class of timber is fitted for it?

A. I suppose any sort of timber, most any kind of timber is suitable.

Q. And what size must it be?

A. Well, it ought to be from six to eight inches in diameter up.

Q. Where was this corduroy you speak of in this item or detail laid?

A. At various points between Carlton and Brainerd, between Staples and Little Falls, between Richland and Lake Park, and up in the swamps of Minnesota north of Brainerd.

Q. How long a haul do you ordinarily have for corduroy?

A. Well, just now it might be quite a long haul; I should judge two or three hundred miles; 200 miles would be a long train haul, though.

Q. But when these roads were constructed and this corduroy was used?

A. Well, they cut it right there.

Q. Cut it right off of the right-of-way?

A. Yes, sir.

Q. Then there wouldn't be included now anything in this for haul?

A. You would have to haul it now, to reproduce it.

Q. Well, I know, but is there included in this eight cents the haul for it?

A. Yes, sir; it is intended to cover the cost of standing timber, plus the cost of cutting down that timber, transporting it and putting it in place; but really, there is very little figured on the cost of transportation.

Q. But you do include something in this for the cost of transportation.

A. Yes, sir; I couldn't tell you how much, because it is simply an estimate, anyway, that eight cents.

Q. As a matter of fact, however, so far as the corduroy that is in the road now is concerned, there was no cost of hauling?

A. No, sir, excepting team-haul; there would be probably team-haul.

Q. It was cut adjacent to the right-of-way?

A. Yes, sir, nearly every place.

Q. Now, I suppose you have made up this estimate of eight cents yourself?

A. No; I agreed to it, though, after talking with Mr. Kimberly and Mr. Bradeger.

MR. HOW: Who is Mr. Bradeger?

WITNESS: My principal assistant.

Q. How did you make up that item of eight cents a foot?

A. Well, now, that corduroy estimate is based on the corduroy being one foot thick for the full width of the embankment and extending eight or ten feet out on either side and covering the full length of the swamp. That eight cents covers the cost of a lineal foot of that corduroy, which should be the cost of a lineal foot of logs say twelve inches in diameter.

Q. By a lineal foot do you mean a lineal foot of the length of the logs, laid end to end, which would go to make up this?

A. Yes, sir, a lineal foot of logs.

Q. A lineal foot of logs, one foot each way?

A. Yes, sir.

Q. How do you get that eight cents? that is the point.

A. Well, for instance, this is made up out of six-inch logs, (that is the smallest logs you can get that are used, smaller than we ought to use,) our fence posts cost us two cents a foot and it takes nearly four fence-posts to make one of those twelve-inch logs. Another way would be to take a twelve-inch log itself, and take the amount of scaled timber in that. The amount of scaled timber in that would be pretty close to half a foot; that would mean five cents; that is calling standing timber worth eight or ten dollars a thousand (which it is in Minnesota); then taking the cost of cutting it and hauling it and putting it in place you have got practically your eight cents.

Q. Well, as a matter of fact, fence-posts are selected timber, aren't they?

A. Yes, fence-posts are selected timber.

Q. And as a matter of fact fence-posts are cut into fixed lengths and peeled?

A. Yes.

Q. There is a good deal of work in them?

A. Yes.

Q. And they cost two cents a foot?

A. Well, I know, but I think we have to do that peeling ourselves; but take, for instance, right on the cost of standing timber, alone—

Q. You mean you pay two cents a foot for the ordinary timber that can't be used for any other purpose, that isn't fit for fence-posts or isn't fit for timber?

A. No, we take for corduroy everything that comes, it may be good timber or bad timber.

Q. And a very large part of it would not be fit for other timber or other uses, would it?

A. A large part. We use any kind of timber we can get.

Q. What sort of timber do you use for ties?

A. We use anything.

Q. Anything for ties?

A. Anything for ties we can get. We use birch, and we use all kinds of stuff, jack-pine and white pine.

Q. What size do you use for ties?

A. 6x8. We use even less than that, as low as 5x7.

Q. But the average tie is about a foot, about the same size as you have estimated here for this corduroy, isn't it?

A. Well, yes, the timber that would make the average size tie would make an average piece for corduroy.

Q. And that timber is cut (I mean the trees are cut) and hewed and selected and put in shape?

A. Yes, sir.

Q. What is the length of a tie?

A. Eight feet.

Q. You have included in your estimate here for ties fifty-five cents apiece?

A. Yes, sir.

Q. That is about eight cents a foot?

A. Yes, sir.

Q. Does that include the laying of the tie?

A. No, sir.

Q. Just the cost of the tie delivered—

A. On the track. Well, it is delivered to the road, it is not hauled or anything.

Q. Just delivered to the road?

A. Yes, sir.

Q. And you think then, that the same price for corduroy is a fair price?

A. Well, that corduroy includes—you have got in that all the loss that you lose in ties. Now, in ties you get the cost of the tie itself, that is, sawed ties, (can't get hewed ties any more)

and in sawing those ties there are slabs and other materials which we don't get any credit for and the man that sells the tie does get a credit for. Slabs are worth $5 a cord.

Q. The railroad doesn't get any credit for that?

A. No, sir.

Q. The railroad pays for the timber upon the basis of the cost of the original tree from which it is cut?

A. Yes, sir.

A. And the cost of sawing it and putting it in shape and delivering it on the track?

A. Yes, sir, but the man that owns the timber gets the cost of the ties plus the cost of the slabs.

Q. But you don't get any credit for that?

A. If we had to buy them we would have to pay for them in that way.

Q. Yes, I suppose you would. But do you get your ties any cheaper because of the fact that he has the slabs?

A. Oh, I think we do, because we try to get slabs and we can't buy them.

Q. What percentage of ties in Minnesota are sawed ties?

A. I couldn't tell you that now.

Q. Isn't it a very small percentage?

A. Well, possibly it is in Minnesota.

Q. And how much of the System in Minnesota where corduroy would be needed is far removed from timbered regions where you could get the corduroy?

A. Why, there is no place that I know of where we can get corduroy now without going outside and buying it.

Q. I know, but how far from your right-of-way?

A. I couldn't tell you just now.

Q. Isn't it a fact, that, even to-day, through the large part of Minnesota, where in reconstructing your System you would get corduroy, it can be bought adjacent to the right-of-way?

A. No, sir.

Q. And near the place you use it?

A. No, sir, you can't; you can't buy it at Corona; you can't buy it all along the line between Corona and Brainerd. Tamarack swamps is about the only thing that is left, and that is small growth tamarack. Now that small tamarack growth is of no consequence at all for mattresses, you have got to get mattresses five or six inches thick. Those mattresses were originally of 12-inch logs and better, and all laid but to end and laid down very closely and tightly. We couldn't get that kind of timber now.

Q. And when laid, limbs and brush on them, all laid in, too?

A. No, sir; as I understood, those limbs were all clipped. Of course, we wouldn't do that today, but instead of putting that corduroy in one foot thick we put it in from two to four and six feet thick. Between Staples and Little Falls the corduroy was put in from four to six feet thick; some places four feet, some places six and other places we would get down as low as two feet, but it would average from four to six feet thick.

Q. When this corduroy was in fact laid on your System, it was taken very largely from the right-of-way, wasn't it?

A. I think it was, and adjacent to the right-of-way.

Q. What is the cost of putting in the work, the labor of cutting pine and tamarack cross-ties?

A. The cost of the labor?

Q. Yes

A. I can't tell you what the cost of that labor was. We have got ties all the way from fifteen cents up to twenty-five and thirty, depending on conditions. They used to pay for labor. They don't do it any more that way, because the man furnishes the material, but we used to pay as high as fifteen to twenty cents; some as low as ten cents.

Q. Do you know what is being paid by the Northern roads for corduroy today?

A. No, sir, I do not. You mean for labor?

Q. No, for the whole thing.

A. No, sir, I do not. Of course it depends on where the timber is and what the timber costs them.

Q. In making up your estimate of eight cents a lineal foot, you didn't take what it actually cost the Road?

A. No, sir.

Q. And you simply formed an estimate of what you thought today it would cost?

A. To reproduce that?

Q. To reproduce that.

A. Yes, sir.

Q. Under the present conditions?

A. Yes, sir. It didn't cost anywhere near that originally.

Q. Would you be able to give us a detail of this eight cents per lineal foot of corduroy, as you have it here?

A. Yes, sir; I could tell you that now. We figure that would run about three-quarters of a foot, board measure, board-running foot, and, figuring the standing timber plus the haul, was worth about $10 a thousand.

Q. Well, this includes the cost of laying it, too, does it?

A. Yes, sir, includes everything.

Q. What did you figure for that?

A. We figured that our labor cost us, at one time, a dollar and ten cents a square (that is, 100 square feet); we didn't go into the details of that at all, we simply took three-quarters of a foot of standing timber (and standing timber is worth seven or eight dollars a thousand in Minnesota) and we called the whole thing worth $10 a thousand to get the timber, cut it and haul it and put it in place.

Q. That standing timber, worth that figure, is what kind of timber?

A. Any kind of timber, pretty near; we can use any kind of timber now.

Q. You pay that much for any kind of timber?

A. I am just going on the prevailing price of a jobber in Minnesota.

Q. I know, but what kind of timber?

A. The average timber.

Q. That is sawed timber, isn't it?

A. Well, yes, but they saw pretty near anything now.

Q. And pine timber, isn't it?

A. Yes, sir.

Q. And the kind of timber that you can use for corduroy can be bought for half that price, can't it?

A. Well, possibly it can; but if we should go to work to pick it, I doubt whether it could. That is merely a guess, I don't know.

Q. In the cost of reproducing the Northern Pacific Railway as given by you in Ex. 2, I don't see anything for construction or operation of telegraph. Does the Northern Pacific own or operate a commercial telegraph line?

A. Yes, sir, partially own and partially in partnership with the Western Union.

Q. Is that included in here?

A. Yes, sir, somewhere.

Q. Where?

A. Item 17, Telegraph and Telephone Line.

Q. Is this line which you spoke of, where there are changes being made from Lake Park to Fargo, a different line from that between Winnipeg Junction and Wadena, or is that the same?

A. Well, part of it is the same. That statement you gave overlaps, because between Wadena and Winnipeg Junction, and between Lake Park and Glyndon, there is a portion (between Lake Park and Winnipeg Junction) that laps.

Q. How much is there of this line between Winnipeg Junction and Wadena that is not included in the line from Lake

Park to Fargo?

A. Oh, you mean in that estimate?

Q. Yes.

A. I couldn't tell you now without going into it in detail.

Q. Here is what I have in mind: As I understand it, there have been certain changes made or being made now between Wadena and Glyndon, I think, and between Winnipeg Junction and Wadena, a part of the line is being so changed that the old line eventually will be abandoned probably and a new line operated.

A. I am not so sure that that will be abandoned.

Q. You are not?

A. No, sir.

Q. That is a different change, then, from the one you spoke of a few minutes ago, between Lake Park and Fargo?

A. Why, part of it is. I can explain that to you better by just a diagram.

Q. Well, if you will, explain it so we can get it in the record.

A. Here is a line that leaves the line from Wadena to Winnipeg Junction. Now, Lake Park is there.

Q. On that line?

A. On that line.

Q. So that Lake Park is on the line between Wadena and Winnipeg Junction?

A. Yes, sir. Now, we have a line following that line through to Glyndon; we have a line that starts off at Lake Park and goes off in this direction, crosses over at Hawley and enters the old line again not far from Stockwood, right in there.

Q. Where is Hawley?

A. Here is Hawley. There is Winnipeg Junction, there is Stockwood, and there is Lake Park.

Q. Now, as I understand it, on the line as at present constructed before this change of line was undertaken, between Wadena and Glyndon and Lake Park, Winnipeg Junction,

Hawley, Stockwood and then Glyndon?

A. Yes, sir.

Q. The old line at Lake Park changed direction and ran on a—

A. That is the new line

Q. The old line was almost a direct line between Wadena and Glyndon, approximately?

A. Yes, sir, approximately direct.

Q. Now, the change of line which we have referred to, the new line, leaves the old line at Lake Park and swings north on a curve and comes back and crosses the present main line at Hawley?

A. Yes, sir.

Q. Swings south on a curve and comes back into the present main line at Stockwood?

A. Yes, sir.

Q. And then on to Glyndon?

A. Yes, sir.

Q. Now, how much of this old line will be abandoned you don't know?

A. No, sir.

Q. And the old line between Lake Park and Winnipeg Junction is included in the old line between Wadena and Winnipeg Junction?

A. Yes, sir.

Q. On your Ex. 2 you have under the head of Grading estimated cost to June 30, 1906, $77,468,890. Does that include clearing and grubbing, as well?

A. Yes, sir.

Q. Can you tell us just what is the difference between grading, clearing and grubbing?

A. Clearing and grubbing is the clearing away of the trees, brush and stumps, to get the roadbed in shape so that they can do the grading; it consists of moving the material and making

the completed roadbed.

Q. And is that clearing and grubbing done throughout the entire width of the right-of-way, usually?

A. The clearing is.

Q. And the grubbing?

A. It depends. We do grubbing wherever there is a cut, or rather, we pay for grubbing wherever there is a cut less than four feet in depth and a fill less than two feet in height.

Q. What do you mean by that?

A. We pay a contractor extra for that.

Q. For grubbing whenever there is a cut—

A. Less than four feet

Q. —less than four feet in depth or—?

A. An embankment less than two feet in height.

Q. But ordinarily, where there is a cut of more than four feet, or an embankment of more than two feet, no payment is made for grubbing?

A. No, sir, that is included in his cost per cubic yard.

Q. Have you anywhere in your details to this Ex. 3 separated and given us the separate amount for grading and the separate amount for clearing and separate amount for grubbing?

A. No, sir.

Q. Will you do so?

A. Yes, sir. Did you want the details of the grading?

Q. Yes, at least we want to know, in Minnesota, how much of that $10,159,811 is for grading, how much for clearing, and how much for grubbing.

A. Well, I have that item here on the third sheet.

Q. Oh, yes, it is here. This item of $10,159,811, for grading, clearing and grubbing, is detailed in your sheet attached to the exhibit headed "Material moved in Minnesota to April 30, 1908, in connection with the grading of the Northern Pacific Railway property", is it not?

A. Yes, sir; but I would like to explain that heading. That heading is wrong, because it should read "December 31, 1906."

Q. Did you, in this item of clearing and grubbing, make up the figure from what the company had actually paid for that work?

A. No, sir, that was made up from an estimate.

Q. An estimate?

A. Yes, sir.

Q. Of what it would cost to do it now?

A. Yes, sir.

Q. And where did you get your information as to the amount of clearing and grubbing that would have to be done?

A. Well, we could only do that by taking the road in sections and going to each individual piece and seeing where there was original grubbing, or grubbing there or not.

Q. Well, did you do that?

A. That was done, yes, sir; I didn't do it personally.

Q. But you had that done before you made this estimate?

A. Yes, sir, that is supposed to be done.

Q. Do you remember what figure you included for clearing and grubbing?

A. Why, I think it is $75 an acre for clearing and grubbing, added together.

Q. Well, there would be much less grubbing than clearing, wouldn't there?

A. Oh, yes, a great deal.

Q. And the cost of grubbing would be only about $16 an acre, wouldn't it?

A. $16.50 a station, about.

Q. That is about an acre, or what is that?

A. Oh, that would be a piece, on an average, I should think, about 100 feet long and 22 or 23 feet wide.

Q. About a quarter of an acre. Well, the cost of clearing would be at least double the cost of grubbing?

A. Oh, yes, more than that.

Q. And the cost and the amount of clearing would be, I suppose, double or more, than the amount of grubbing?

A. Yes, sir.

Q. So you simply lumped it at $75 an acre right straight through?

A. Yes, sir.

Q. Which, of course, would be excessive to the extent, or would it be—what is the cost of clearing, alone?

A. Well, we estimated the cost of clearing over the System at $80 an acre. I should judge in Minnseota (that is, the way the clearing was originally) that it could be done for $60 or $65 an acre.

Q. Do the reports made to you show where this clearing and grubbing was done on your lines?

A. Yes, sir; that is in detail, I think.

Q. Can you furnish us that?

A. I can furnish it, yes, sir.

Q. If you will, please.

A. Yes, sir.

Q. The reason for asking that is we understand that there are a good many places where there is none, and others where it is very slight, and we may have some examinations made, and would like to have that. I find on Exhibit 2, "General Office Buildings and Fixtures, $836,600." Where are those general office buildings and fixtures located?

A. At St. Paul and Tacoma.

Q. How much of this $836,600 is for the St. Paul buildings and how much for the Tacoma buildings?

A. Well, I haven't the details here. We have the details.

Q. Will you furnish us that?

A. Yes, sir.

Q. Also, can you tell us whether the figures included in this

$836,600 for general office buildings and fixtures is the cost of them?

A. I think it is the cost of them.

The MASTER: In speaking of the cost, you mean the cost as taken from the records?

WITNESS: Yes, sir.

Q. I notice that you have given us the cost of track-laying. Was that upon the theory that you would lay your own track, or that you would lay it by contract?

A. Which have you reference to?

Q. I think it is on your Exhibit 2.

A. That is what a mile of track averaged us in cost whichever way it is constructed.

Q. Do you ordinarily lay it by contract or the Road itself?

A. A good deal of our construction work is done by contract, some of it is done by day-labor.

Q. The contractors use track-laying machines?

A. Yes, sir.

Q. Isn't it a fact that the contractors who use these track-laying machines take contracts to lay track for $275 a mile, where you have it $375 a mile in your estimate?

A. No, sir, it is not a fact.

Q. Are there any contracts in your department, or with the road, that you know of, that have been made for track-laying by others, in the last three years?

A. You mean outside of our road?

Q. No, on your road.

A. I know that all the contracts that we have been making in the last three years are at the rate of $300 per mile.

Q. $300 per mile?

A. $300 per mile for track-laying.

Q. And you have put it in at what figure here, $375, haven't you?

A. Well, there is an item of $375 for cost of laying track,

but that track-laying includes—

Q. Have you not included in your estimate here at $375 for track-laying instead of $300?

A. I have got an item here, "Cost of laying track $375.50." Now, our contracts are on the basis of $300 per mile for laying track, under certain specifications. There has to be added to that the cost of putting down tie-plates, which is $75 a mile. That goes to make up this $375 per mile. But this does not include extra bills, which should properly be included, probably to the amount of five or ten per cent. Now, we have left those out entirely.

Recess until 2 p. m.

AFTERNOON SESSION.

Q. You have put in your estimate for grading in Minnesota (detail 3, I think), 33 cents per cubic yard. That refers to earth, not solid rock, as I understand it?

A. That refers to all other classes of material except solid rock.

Q. That is an average.

A. Yes, sir.

Q. How much of that 33 cents do you estimate goes to the contractor for his work in removing that, and how much to the road for what it would furnish in the way of transportation and other incidentals?

A. Why, it generally runs from five to twenty-five and thirty per cent; that is, what the Company pays in addition to what we pay the contractor.

Q. What do you mean by that?

A. It varies with different pieces of work. There would be some pieces of work on which the contractor would be paid a certain price, with the understanding that the Company will perform certain pieces of labor itself, we furnishing certain

materials; and on other pieces of work the contractor may do nearly the whole of it.

Q. And that varies; sometimes the Company will do twenty-five per cent of the cost of the work and sometimes less?

A. Yes, sir.

Q. In this average of 33 cents per cubic yard for grading, what would be the average that the contractor would get?

A. Oh, I should judge that twenty per cent would be a pretty good average that the Railroad would pay, that the contractor would get eighty per cent, perhaps eighty-five. I have shown, in one of these details, exactly what we have been paying in the last three years, what we paid the contractor and what it has cost the Company, in Minnesota.

Q. Take your line from St. Paul to Staples, is that an average of the System in Minnesota?

A. No, sir. I should say the line from Staples to Moorhead was about an average.

Q. Is the line from St. Paul to Staples more expensive or less expensive than the average?

A. Less.

Q. About what would be, in your opinion, the cost of removing all except the solid rock in the construction of the line from St. Paul to Staples?

A. About twenty-nine cents.

Q. Would it be about the same for the entire line?

A. No, sir, about thirty-three cents for the entire line.

Q. Pardon me, I mean about twenty-nine cents for all parts of the line between St. Paul and Staples, or would it vary in different parts?

A. No, it would vary, that would be the average.

Q. What would be the different prices in the different portions that are not similar between Staples and St. Paul?

A. Well, it is pretty hard work to tell. I would divide it into three districts.

Q. What would they be?

A. From Northtown Junction to Sauk Rapids, from Sauk Rapids to Little Falls and from Little Falls to Staples.

Q. Which would be the more expensive of the three?

A. Little Falls to Staples.

Q. And which the more expensive of the other two?

A. From Northtown Junction to Sauk Rapids, for the reason that it is all one-side work. It is easier material, but it all has to be worked from one side. From St. Cloud to Little Falls is through a very good material, it can be moved from both sides; the contractor could move it cheaper.

Q. That would be cheaper?

A. Yes, sir.

Q. How much more expensive is that from Little Falls to Staples?

A. Well, very much more so. I should judge that would cost thirty-one or thirty-two cents.

Q. What would you think it would cost from St. Cloud to Little Falls?

A. Perhaps eighteen cents; eighteen or nineteen.

Q. What do you think it would cost from Northtown Junction to St. Cloud?

A. Twenty-three or twenty-four cents. I may be a cent or two off in that.

Q. Twenty-three or twenty-four cents, you think?

A. Yes, but I know the general average I used straight through was about twenty-nine cents.

Q. In that district?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By MR. HOW:

Q. I show you Complainant's Exhibit 4—Darling, and ask you what that is intended to represent.

A. That shows the number of cubic yards moved during the last three years, together with the cost of it, the cost per cubic yard to the Railway Company, and the cost per cubic yard as paid the contractor.

Q. In what localities has that yardage been moved?

A. Over the entire system.

Q. And for what purpose—for the purpose of constructing track?

A. Yes, sir, constructing and revising track.

Q. This was prepared by you, I understand, at the request of counsel for the defendants, was it not?

A. No, sir.

Q. They asked you to compile it with regard to the Big Fork & International?

A. Yes, sir.

Q. And the rest you added?

A. The Big Fork & Northern. We have the Big Fork & International here and they asked for the Big Fork & Northern, which we are doing now.

Mr. DURMENT: The Big Fork & Northern compilation has not yet been furnished us.

WITNESS: No, sir; we have an estimate practically made.

Q. How does this work that you have been doing within the last three years—Did you do all this work?

A. Yes, sir.

Q.—in Minnesota, compare with the general work which would be necessary to be done for the present construction of the System in Minnesota if it did not now exist?

A. Well, it is a little more expensive, perhaps, on account of the extremely high wages paid and the bad conditions under which it was done.

Q. It averages, according to your statement, for the 6,659,932 yards moved in Minnesota, 35.7 cents a yard cost to the Railway Company.

A. Yes, sir.

Q. I ask you if that is an accurate statement.

A. Yes, sir.

Q. Was that work done under your supervision?

A. Yes, sir.

Q. All of it?

A. Yes, sir.

Q. Did you yourself make the contracts?

A. Yes, sir.

Q. Some of it appears to have been done by contract and some by the Railway Company itself. That is the fact, is it?

A. Yes, sir, some partly by one and some partly by the other.

Q. Some partly by the Railway Company and some partly by contract?

A. Yes, sir.

Q. Did the cost to the Railway Company at that time fairly represent the going cost or prices at that time?

A. Yes, sir, but it is a little more than I figured in the general average.

Q. I see it is, that is why I am anxious to put it in the record.

A. And there is another thing, that extra price is due, too, to the fact that it is a little harder work than the general average.

Q. Have you any work upon the Minnesota System as it now exists that is as hard as this or harder?

A. Oh, yes, sir, a lot of it.

Q. And more expensive?

A. Yes, sir.

Q. I see that your statement shows that on the total Northern Pacific System, within the past three years, you have moved 22,170,792 yards of material, at an average cost of 49 cents per yard.

A. Yes, sir.

Q. To what extent has solid rock come into that?

A. The solid rock is wholly eliminated from this statement.

Q. This applies merely to what?

A. All classifications outside of solid rock.

Q. And that is the same system that you have applied in Minnesota with your average of 33 cents?

A. Yes, sir.

Q. I ask you if that 49 cents per yard cost to the Railway Company was upon going prices during that period?

A. Yes, sir.

Q. Has the construction of the Spokane, Portland & Seattle Railway line been under your charge?

A. Yes, sir.

Q. And is it now?

A. Yes, sir.

Q. Does the character of construction of that line compare in any respect with any portion of the Northern Pacific System, as it now exists and is operated, if it were to be now constructed?

A. Oh, there are some portions that compare with the Northern Pacific, but as an average, of course, it is a great deal harder than the Northern Pacific System.

Q. Heavier construction?

A. Yes, sir.

Q. As an average?

A. Yes, sir.

Q. But it is of no different character of construction than a portion of the Northern Pacific? There is some of the Northern Pacific, I mean, that is of the same character as this.

A. Yes, sir, there is some of it of the same character.

Q. Your statement shows that you have moved, in that construction 31,592,315 yards, at an average cost to the Com-

pany of 64.02 cents a yard; has that been done by contract or by the Company?

A. Entirely by contract.

Q. Is solid rock eliminated from that statement, as well?

A. Yes, sir.

Q. Has that been done at going prices?

A. Yes, sir, at the prices that prevailed at that time.

Q. How long has that work been going on—the grading?

A. Since October, 1905.

Q. A little less than three years?

A. Yes, sir.

Q. And it is still going on?

A. Yes, sir. I would like to make one change in that. The estimated cost per yard of the Spokane, Portland & Seattle line does include solid rock. That is explained in the details on the next sheet.

Q. Your Exhibit No. 2 shows, on the page "Details of Grading" earth 28 cents per yard; I will ask you how that price compares with the prices that you have paid during the past three years for moving earth upon the roads which have been under construction by you.

A. It is very much less.

Q. How much less on the average, do you think?

A. Well, our work has averaged a good deal over thirty cents.

Q. It shows, as the price estimated for hard-pan, forty-two cents per yard. I will ask you how that compares with prices that you have paid during the past three years.

A. Well, it is much less than what it has actually cost the Company.

Q. That is what I mean.

A. Yes, sir.

Q. That is what this detail is meant to show—what it would cost the Company?

A. Yes, sir. There is a detail showing how that is made up. The estimate is low.

Q. That leaf of your exhibit shows loose rock fifty cents per yard. I ask how that compares with the prices that you have been paying for the last three years.

A. Well, it is low to the Company.

Q. And in regard to the solid rock, $1.10 per yard, how does that compare?

A. That is low.

Q. Rip-rap, $2 per yard. Have you had any rip-rap work to do within the last three years?

A. We have had some, not very much, but that is a fair price for rip-rap.

Q. What is your judgment with regard to your estimate of 33 cents per yard for all material exclusive of solid rock in Minnesota—that is, cost to the Company—when judged by the amounts that you have had to pay for moving material other than solid rock in any and all contracts which you have had under charge in the last three years?

A. It is low.

Q. What is your estimate with regard to 28 cents for moving earth on the entire System?

A. That is very low.

Q. When judged by the amount that you have had to pay within the last three years?

A. Yes, sir.

Q. All over the System?

A. I will say that those estimates were made before we knew what this work was costing us.

Q. So that your justification, as contained in this Ex. 4, was not fully known to you until after you made these figures which are contained in Ex. 2?

A. No, sir.

Q. Would you, at the present time, feel justified, upon the

basis of your experience within the last three years, in amending and raising those figures?

Objected to as immaterial.

A. If I had that estimate to make now, and to be made on the basis of the conditions of the last three years, I should want to raise that estimate for moving material.

Q. You have explained what Ex. No. 4, sheet No. 1, is. What does sheet No. 2 show?

A. That represents the number of cubic yards of material moved, and the prices paid, for each particular class of material, together with the cost per cubic yard, of various kinds of material, moved on the Spokane & Seattle, on the Cul-de-Sac branch, on our White Pine Hill, on the Northern Pacific and the Livingston & Muir work.

Q. Within what period has that work been done?

A. Since October, 1905.

Q. I will ask you what sheet No. 3 discloses.

A. That shows the various prices paid for different classes of material to various contractors.

Q. Within what period?

A. Since October, 1905.

Q. And in what localities?

A. All on the Northern Pacific.

Q. Yes, but in what states?

A. Over the System.

Q. Some in Minnesota?

A. Some in Minnesota, some in Montana, and some in Washington.

Q. And up to how late a period has that work been going on that is covered by this?

A. It is still in progress.

Q. Still going?

A. Yes, sir.

Q. And what does sheet No. 4 show?

A. Sheet No. 4 shows the average cost per cubic yard for ballast.

Q. During what period?

A. Since January, 1906.

Q. Up to what period?

A. Up to the present time, in Minnesota and North Dakota.

Q. What does sheet No. 5 represent?

A. The average cost per tie, furnished in Minnesota and North Dakota, for second-track work and improvement work since January 1, 1906.

Q. And up to the present?

A. Yes, sir.

Q. And what does sheet No. 6 disclose?

A. This is the average cost, per mile, of track-laying and ballasting, during the last two or three seasons, in Minnesota and North Dakota.

Q. Up to the present time?

A. Yes, sir; those are the actual prices paid.

Q. Each of these sheets shows the amount of work done, either in miles or in yards, or perhaps both, with the cost to the Company in the aggregate, and the average cost per cubic yard or per tie, as the case may be?

A. Yes, sir; with one exception.

Q. And that is—?

A. That is the Big Fork & International. I explained, when this was first submitted, that this total cost is correct but the cost per cubic yard to the Railway Company is not correct, because the yardage is not correct. We have not been able to measure up our yardage, so that the price per cubic yard shows very much higher than it actually is.

Q. You will have to measure up the yardage, after you have finished the job, in order to know how much the yardage is to be?

A. Yes, sir. That price paid the contractor is all right.

Q. 33.4 cents paid the contractor per cubic yard?

A. Yes, sir; but that price there includes the total cost of the work we have done, divided by the total number of yards that was moved at that time, as far as I know, but I have no doubt there has been a good many more yards moved, and that price, of course, would be much lower.

Q. But the amount per yard paid to the contractor is correct?

A. Is correct. His contract price in there was 30 cents per yard, and we have actually paid 33.4 cents.

Q. What has the addition been caused by?

A. By extra work, by having to pay for his transportation, when his contract provided that he should furnish his own transportation.

Q. What is the cause of that?

A. He had lost so much money that we had to.

Q. In order to keep him going?

A. Yes, sir.

Mr. How: I offer this exhibit now, consisting of six sheets, and I will see that the Master and counsel receive copies of these other sheets. This is to take the place of Ex. 4, already identified.

The paper referred to was marked for identification "Complainant's Exhibit 4—Darling."

Q. I show you Complainant's Ex. 5. What does that purport to show?

A. That is the detail estimates of the tunnels in St. Paul.

Q. With the estimate of cost; and by detail estimates you mean the amount of different material necessary to go into the tunnels if they were to be presently constructed as they now exist, with the cost of each foot or yard, as the case may be, of such material?

A. Yes, sir.

Mr. How: I offer Complainant's Exhibit 5—Darling.

Q. I think you testified that in making your estimate of material to be moved, you had taken the original records and profiles and added 20 per cent to that, on account of the added yardage cost in bringing the road up to modern standards?

A. I took an estimate made in 1898.

Q. That was made upon your records?

A. Yes, that was made from our records.

Q. And you increased that by twenty per cent?

A. Yes, sir.

Q. Did you make that estimate in that way originally for Minnesota and Washington?

A. Yes, sir.

Q. I understood you to testify that since you had made that estimate, adding twenty per cent to the 1898 estimate taken from the records of your office, you had made detailed measurements and examinations, both in Minnesota and Washington, so that you could make an accurate estimate based upon such detailed measurements and examinations without the addition of the arbitrary twenty per cent for widening of the standard?

A. We have made such an estimate. Our original estimate had added twenty per cent to the quantities of the 1898 estimate. After that we made detailed estimates in Minnesota and Washington for the State Commissions. Those estimates were about 350,000 yards higher than what I had originally estimated for the two states.

Q. That is to say, your estimate based upon your detail recently made, increased the estimate made by the addition of twenty per cent to your 1898 estimate, by 350,000 yards?

A. Yes, sir; that is for those two states.

Q. That is as far as you have got, isn't it, with your detail estimates?

A. Yes, sir.

Q. A comparison between your Exhibit 3, being the state-

ment made by you as to the cost of reproduction, or present cost of construction, perhaps, of the Northern Pacific System in the state of Minnesota, with Defendants' Ex. A., being the report made by your Company to the State, shows that in Defendant's Ex. A, the cost of grading, clearing and grubbing is put at $8,892,664.06, and in your statement it is put at $10,159,811; will you explain the difference between those figures?

A. It is a difference due merely to the price per cubic yard for all material outside of solid rock. The quantities are identical.

Q. Do you know what price was used in the report made to the State?

A. No, sir. They had it divided into solid rock, earth and loose rock. I forget whether they had any hard-pan or not, and I cannot remember what their prices were, but I believe 29 cents for earth and 45 cents for loose rock. I am not certain, however, as to those prices.

Q. I think you have testified that you classified it merely into two materials, solid rock and all other materials?

A. Yes, sir.

Q. And used what figure for solid rock?

A. $1.25.

Q. And 33 cents for all other materials?

A. Yes, sir.

Q. And the application of those prices caused the increase in the figures?

A. Yes, sir.

Q. Item No. 35 of Defendants' Ex. A is composed of engineering, superintendence, legal expenses, four and one-half per cent on items 1 to 28 inclusive; what did you allow in your estimate for superintendence and legal expenses?

A. I had no such item as superintendence and legal expenses, because superintendence is all supposed to be covered

under engineering. Legal expenses would come under my item of ten per cent for contingencies, or it might come under "organization" which I do not include in any of my estimates.

Q. And that must come under "contingencies" if at all in your estimate?

A. If at all it must come under contingencies, but it should not be placed under contingencies in my estimate.

Q. Item No. 36 of Defts' Ex. A is Interest during construction, 11 per cent; organization, one and one half per cent; Contingencies, 10 per cent; total 22 1-2 per cent. Of those items you appear to have only Contingencies, 10 per cent; is that the fact?

A. No, sir, I have another item.

Q. You have Interest during construction, to be sure—

A. Yes, sir.

Q. —but you have 10 per cent, and the State report, Defendants' Ex. A has 11 per cent?

A. Yes, sir; that is arbitrary. I don't know whether mine is right or not, it is just simply an arbitrary sum given there; I simply estimate it would take—in fact all my prices were based on the assumption—that it would take 10 years to perform this work, and I assume that the money would be at interest for two and one-half years, on an average, before it could earn any money or earn money enough to pay the operating expenses.

Q. The total of the valuation to the State, as reported to the State in Defendant's Ex. A, is $87,862,978.86; your total is $87,803,110.15, as shown in your Ex. 3, being a difference of approximately $60,000 in which Defts' Ex. A exceeds your Ex. 3. Taking into account the fact that there are included, in your Exhibit 3, one-ninth interest in the St. Paul union depot, one-tenth interest in the Minnesota Transfer Railway Company, and 70 per cent interest in the Minnesota & International Railway,—that is the fact, is it not?

A. Yes, sir.

Q. And the only differences between your report and theirs, with the exception of the fact that your engineering item is different, because although calculated upon the same percentage, it is calculated upon different figures, have been explained by you so far as appears?

A. Yes, sir, I think so.

Q. Does your Ex. 2, being your estimate of the present cost of construction of the Northern Pacific System, cover any properties other than the lines in Manitoba, the St. Paul union depot and the Minnesota Transfer Railway, excepting such as are in the possession of and operated by the Northern Pacific Railway Company?

A. Yes, sir, there is one more.

Q. What is it?

A. The Minnesota & International.

Q. And the Minnesota & International.

A. Yes, sir.

Q. All the rest of the properties covered by this statement, I understand, are in the possession of and operated by the Northern Pacific Railway Company?

A. They are operated, and I suppose owned, by the Northern Pacific; I don't know.

Q. They are owned so far as your knowledge goes?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. DURMENT:

Q. Calling your attention to Ex. 4 and the sheet headed cost of grading per estimates of April 30, 1908, are these prices, cost per cubic yard, the prices paid the contractors, or the total cost to the Company?

A. Total cost to the Company.

Q. All this work, I understood you to say, shown on this sheet, was done by contract?

A. Yes, sir, nearly all of it.

Q. Now, then, you may state to us what was the contract price which you paid the contractor for loose earth, what for hard-pan and what for solid rock.

A. Here are the different prices paid contractors for earth.

Q. Does that include the work referred to in this page cost of grading per estimates of April 30, 1908?

A. Yes, sir.

Q. Will you just refer to this sheet you speak of and tell us what was the contract price to be paid the contractor on the Kennewick-Vancouver line, the S. P. & S. R'y Co., for moving solid rock?

A. Those prices varied from 85 to 90 cents.

Q. Where does that appear?

A. This is the price paid contractors on the Northern Pacific. These are all on the Portland & Seattle except these three later ones; that is Northern Pacific, and that is Northern Pacific, and that is.

Q. You say the cost would be for solid rock. The contract price you paid was what?

A. 85 to 90 cents.

Q. And yet you have figured that the cost to the Railway Company was, on the average, 88.19 cents?

A. Well, that is probably because the greater part of that contract was let for 85 cents.

Q. Well, do you know that now, or are you simply guessing?

A. I am simply guessing at that, but the more I look into this the more I think that this is not the cost to the Company, that this is exactly what we paid the contractor.

Q. Now, then, what is it? that is what we want to know.

A. I would prefer to check that up again, but the more I

look into this the more it seems that this is exactly what we paid the contractor, because this is not the cost to the Railway Company, it can't be. But this is, this on the second page; on the page headed Cost of Grading per Estimate of April 30, 1908, I think is the average price we paid the contractor.

Q. You formerly thought, as I understand, that it was the cost to the Company.

A. Yes, sir.

Q. And at the present time you don't know which it is?

A. No, sir, I would have to check it up.

Q. I find on the first page of Ex. 4, under head of Lake Park to Glyndon, that the cost per yard to the Company was 35.7 cents, whereas the price paid the contractor was 36.2 cents; how do you account for that?

A. That is a piece of work from Lake Park to Glyndon. The contractor did all that portion of the work between Lake Park and Hawley for change of line. The average price we paid him was 36.2 cents. The Railway Company did all the rest of it from Hawley to Glyndon, which included all the heavy cuts and heavy fills to Stockwood, and that we did at a very much less price than we paid the contractor, so that the general average price brings this cost to the Company down in this particular case.

Q. Then the proposition is this, that this 36.2 paid the contractor includes other work than that included in the 35.7?

A. No, this includes other work than is included here.

Q. Then the cost per yard to the Company is the cost per yard to the Company of a larger piece of work; it includes that which is shown here for 36.2 paid the contractor?

A. Yes, sir.

Q. There is something that brings the average down?

A. Yes, sir.

Q. If on this sheet Cost of Grading per Estimate of April

30, 1908, the cost per cubic yard represents the actual cost to the Company, you are not able to state what part of it is for the price paid contractor and what price for others cost to the Company?

A. No, sir.

Q. On this sheet headed Northern Pacific Railway Company Cost of Track, Ties, etc., 1906-1908, I notice the average cost of ties on that part of the road between Wadena Junction and Lake Park, second main track, is 41 cents; nothing is carried in there for the cost from Lake Park to Glyndon; why is that?

A. Well, the chances are we had not got those ties yet, at the time this estimate was made, or it might not have been charged out.

Q. I notice from Glyndon to Moorhead, second main track, the average cost per tie was 59 cents; why so great a difference as 18 cents in the cost of a tie between those two sections of your Minnesota railway?

A. The 41 cent tie was purchased in 1905, before the price of ties went up; then these 59-cent ties were probably purchased a little later, and the 76-cent ties probably still later.

Mr. DURMENT: In order that the witness may not be misunderstood, the 76-cent tie is one in Dakota and not in Minnesota, and not the one with reference to which I ask.

Q. Then the difference between 41 cents per tie on one section of the road, in Minnesota, and 59 cents on another section, in Minnesota, is due to the difference in the cost of the tie, they being bought at materially different periods?

A. Yes, sir.

Q. Mr. How asked you again about the twenty per cent that was added to bring the old road-bed up to its standard. That there may be no mistake, I still understand, however, that in the estimates you gave in your Ex. 3 of the cost of the road in Minnesota, this twenty per cent cuts no figure?

A. No sir.

Q. Your estimate as shown in Ex. 3 is based upon what you consider actual quantities from details?

A. Yes, sir.

Q. You have several times in your testimony spoken of the fact that it would take ten years to complete this System if you were to begin and had to create it anew.

A. Yes, sir.

Q. In making your estimates here and taking the prices of materials and labor, what did you use as the basis of the prices for materials and labor, the present cost or the cost a few years ago, or the cost that you assume will be in the future?

A. I assumed the prices that it would be necessary to pay provided they started in to build the Northern Pacific System to-day and that nobody else built at all, nobody else but the Northern Pacific, and that they used all the available plant in the Northwest; that it would take ten years, with that plant, to build this railroad, at those prices.

Q. Yes, but at what price did you figure you would pay—the rate of the going prices for labor to-day, the rate of the going prices for steel to-day, the going prices for timber to-day, or were they increased over the present-day prices or less than the present-day prices?

A. Everything was the exact prices of the last two or three years, with the exception of grading; and grading was perhaps a little less, if anything.

Q. Then the prices you assumed for grading did not exceed the prices that have obtained in the last three years?

A. No, sir, they didn't quite come up to what it has cost us for the last three years.

Q. And the prices which you assumed for the cost of other materials, steel and ties and the like—

A. Exactly as they are to-day.

Q. Exactly what they are to-day?

A. Yes, sir.

Q. And the prices for labor?

A. Well, the prices for labor are included in the prices for grading. But for all other work, it is exactly what the prices have averaged for the last three years.

Q. Referring to your sheet which was used to assist Mr. How in his examination—and I will refer to it for the purpose of this questioning—I understand you that under the item Clearing, Grading and Grubbing the difference is due entirely to the fact, that, in making your estimate for that, you placed the cost of the labor or the cost of doing the work, at a higher figure than the road placed it in the report referred to, in the original valuation report?

A. Yes, sir.

Q. Is it not true that prices for labor and material for three years past are higher than they have been at any time within twenty or thirty years?

A. Yes, sir.

Q. And very materially higher?

A. Yes, sir.

Q. Is it not true that they were, in general, higher in the years 1905, 1906 and 1907 than they have been since the first of January, 1908?

A. They were during 1906 and 1907.

Q. And they have decreased considerably in the present year, have they not?

A. Yes, sir.

Q. You were to furnish some additional information or statement requested this morning.

A. Here is the general office building estimate, divided between St. Paul and Tacoma.

By Mr. How:

Q. I think that you testified, when you were on the stand before, that in your judgment, based upon your experience in such matters, notwithstanding the fact that there is a tem-

porary depression in prices below what they were in 1906 and 1907, if the Northern Pacific road should start to build its something over 8,000 miles of track within the shortest practicable time, which you think would be ten years, it would have an influence in stiffening prices back to their highest level; have you so testified?

A. Yes, sir.

Mr. DURRIENT: We object to that. I would like to insert an objection to this before the witness answers, and have it apply to the other testimony, if he so testified, as being merely speculative and wholly immaterial and incompetent.

Mr. HOW: He bases it upon his experience.

Q. What is your judgment with regard to that?

A. Why, the price of grading, the cost to us of work, depends entirely upon the available plant of contractors and on what we have ourselves. When we have a lot of idle plant, more than enough to keep the work going, the price would not go up. If the contractors or Railroad Company have a lot of idle plant, they are willing to do work at a good deal lower prices. When labor is more plentiful, the cost of labor comes down.

Q. How much of the available plant do you think would necessarily be used in constructing the Northern Pacific System in ten years?

Objected to as immaterial and speculative.

The MASTER: Objection noted.

A. Well, I can give you an example. The Milwaukee and the Northern Pacific are constructing to-day, the Milwaukee 1300 miles and the Northern Pacific say 800 miles, which make a total of 2100 miles that they have constructed in four and one-half years. That is an average of less than 500 miles per year, and that takes all the available plant in the country—is what made these prices. If we constructed the Northern Pacific System in ten years we would have to build a com-

pleted track of nearly 800 miles a year, almost double what has been built in the last two or three years.

Q. Which has taken, as you say, all the available plant in the country?

A. Yes, sir.

By Mr. DURMENT:

Q. At no time in the history of the country have they ever undertaken to build, in a period of ten years, a system like the Northern Pacific, have they?

A. No, sir.

Q. What you call the Northern Pacific System now, is the result of something like thirty or forty years of railroad building, isn't it?

A. Yes, sir.

Adjourned until the morning of Wednesday, July 22.

FEDERAL BUILDING, Wednesday A. M., July 22, 1908.

HEARING RESUMED.

WILLIAM L. DARLING,

recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. You were asked yesterday, or day before, Mr. Darling, to furnish us a statement, giving separately, the values which were included in your Exhibit 2, I think, (either 2 or 3) for the headquarters building, the general office building.

A. Yes, sir.

The MASTER: In St. Paul?

Mr. DURMENT: That didn't show in this exhibit, and the purpose of having this made up was to show where these headquarter buildings were.

Q. I show you Defendants' Exhibit R—Darling, and ask

you if that is a detail of the item Headquarters Buildings contained in that former exhibit or schedule to which we referred.

A. Yes, sir; that is detailed to show the cost of the building at St. Paul and the cost of the building at Tacoma, only two of which were included in the total estimate.

Mr. DURMENT: We offer Defendants' Exhibit R in evidence, as a part of the cross-examination, and copies are here or will be.

Q. You were asked to furnish a list of the railroad lines or corporations, the operating properties of which were valued in your Exhibit 2 as the Northern Pacific system, as of about the date of the commencement of this suit. It was agreed that June 30, 1907, was the nearest date and would answer the purpose. Now, I show you Defendants' Exhibit S—Darling, and ask you whether that is the list, and, if so, to explain the meaning of the red cross-marks opposite certain of them.

A. This schedule shows the lines owned, controlled, leased and operated jointly, through the different states, or that the Northern Pacific operates through the different states. The red cross-marks show the lines that were not included in the estimate.

Q. That is, in the estimate Exhibit 2?

A. Exhibit 2 or 3.

Q. As I understand it, all the lines included in the estimate 3 were included in the estimate 2?

A. Yes, sir.

Q. So then, when we say that this list, Exhibit S, omitting those opposite which is the red cross, are all contained in the estimate Exhibit 2, we cover it, don't we?

A. I think so, yes, sir.

Q. And the estimate made by you and set forth as Exhibit 2 in this action contains no other properties, nor no estimates or values for any other properties, than such as pertain to these various lines mentioned on Exhibit S?

A. No, sir.

Q. You mean by "No, sir" that the statement is correct?

A. That the statement is correct, yes, sir.

Mr. DURMENT: We offer in evidence this Exhibit S.

Q. Referring to the last sheet of this Exhibit S, is that a continuation or a summary of the preceding sheets?

A. It is a summary.

Q. I suppose that on this last sheet in this summary under the head "Branches, 3,029.48 miles main track" is simply the total of the mileage of the main track of the branch lines shown on the preceding pages?

A. Well, the main track of the branch lines owned.

Q. But shown on the preceding pages of this exhibit?

A. Yes, sir, as owned.

Q. Can you tell how much, if any, of that 3,029.48 miles was acquired before the execution of the consolidated mortgage in 1889?

A. No; I should have to look that up for you, I couldn't tell you now.

Mr. DURMENT: I will ask you at your convenience, within the next few days, to furnish a statement of that.

Mr. HOW: Are those records of your office or of Mr. Gray's that discloses that?

WITNESS: Well, I think we would have to go through both records.

Mr. HOW: Will you explain just what you want?

Mr. DURMENT: In this summary, on the last sheet, there is 3,029.48 miles main track of branches. Now, as I understand it, those branches were either built by the Northern Pacific or acquired by it after others had built them at different times.

WITNESS: Yes, sir.

Mr. DURMENT: And Mr. O'Brien wants to know how much of that mileage and the names of the particular companies that owned it, was acquired by the Northern Pacific Railway Com-

pany, or its predecessor, before the consolidated mortgage was issued.

WITNESS: Mr. Gray could give that information.

Q. Better than you?

A. Yes, sir, I would have to go to his office for that particular information.

Mr. DURMENT: Well, I suppose you won't object to my asking Mr. Gray that on cross-examination?

Mr. HOW: No, but I would like for you now to notify Mr. Gray. I take it that Mr. Gray will not be cross-examined today, but if you will notify him now so he will be ready for it Friday.

Mr. DURMENT: I will do that now or before we leave this morning. He is here, isn't he?

Mr. HOW: Yes, he is here.

Mr. DURMENT: We have no further cross-examination, at present, of Mr. Darling, except it be upon the detail he is to furnish us of the cost of a mile of railway in Minnesota, which is not yet ready, and of course we reserve the right that was spoken of, if it appears that anything has been overlooked of importance, later to recall him, or if we have not offered all our exhibits to offer them later. I think we are through with Mr. Darling.

Mr. HOW: Will you have that information ready that he asked for which you were to prepare, which I think now is confined to a mile of track in Minnesota, by Friday morning?

WITNESS: Yes, I think so.

Mr. HOW: We are ready to produce Mr. Gray for further cross-examination this morning. I understand that counsel are not ready to cross-examine him further until Friday.

Mr. O'BRIEN: Yes.

Mr. HOW: And I don't find myself, after reflection, able to oppose a continuance for that purpose. Although Mr. Gray's cross-examination was interrupted on the 26th of June, still, if

counsel are not ready, I have nothing to say, as I know they have been occupied with other things that it was understood they would be occupied with when we took a recess on the 26th of June. But I desire to adhere to the position I took some time ago, that the Minneapolis & St. Louis Complainant produce witnesses next Monday; and if there is going to be any doubt as to our privilege of doing so, I suggest we ought to go before the Court who made the order appointing the Master and regulating his duties and procedure and determine whether we have any right to do so and whether it is proper for the Master to undertake the Minneapolis & St. Louis case prior to the entire completion of the Northern Pacific case. I understand that the Master has taken the position that if we cannot produce witnesses in the Northern Pacific case, we need not sit still and hold all these other cases in abeyance for two or three weeks, but that he would go on with the Minneapolis & St. Louis case.

Mr. O'Brien suggested that the State be permitted to offer its testimony in the Northern Pacific case on the question of values, in order to keep the matter segregated, and close up one branch of the case at a time.

The MASTER: Well, gentlemen, I will state to you what I think the duty and the position of the Master is in the matter of these rate cases, very briefly. I have already suggested it to you. It is very desirable, if it is possible and reasonably practicable, for counsel to arrange with each other as to how the testimony shall be taken and the cases heard and submitted; but the cases have all been referred to the Master, nine of them, to take the testimony, pass upon the facts and report to the Court, and three months have been given to each Complainant within which to take the testimony. Pursuant to that order I summoned the parties in the nine cases before me so that they might understand that I was ready to proceed with the cases and to take the testimony as it should be from time to time

submitted, and insisted that Complainants should name some one of the cases in which they would commence to take testimony. But it seems to me that it is for me to sit here and take testimony in the nine cases, accommodating counsel as far as possible, and that if in any one case the Complainant shall have proceeded as far as he can with the testimony in that case and there is an opportunity for the taking up of testimony in some other case, upon reasonable notice here given, because these cases are before the Master all the time, it would be the duty of the Master to take up any other case in which the parties were prepared to submit testimony and that if insisted upon, the Master could not refuse to do so. If this method is not satisfactory and counsel think some other course ought to be pursued, I suggest that they go before the Court and ask that some different order be made in the premises.

Adjourned until Friday, July 24, at 10 A. M., to meet at the office of the Comptroller of the Northern Pacific Railway Company.